

Übersetzung des ersten und zweiten Kapitels des Einführungsgesetzes zum Bürgerlichen Gesetzbuche (Inkrafttreten. Vorbehalt für Landesrecht. Gesetzesbegriff: Artikel 1 und 2 EGBGB und Internationales Privatrecht: Artikel 3 bis 48 EGBGB) durch Prof. Dr. Juliana Mörsdorf, LL.M. (Berkeley); Übersetzung des Artikels 240 durch Ute Reusch.  
Translation of the Introductory Act to the Civil Code, first and second Chapter (Entry into force. Reserve for the law of a Land. Definition of Statute: Articles 1 and 2 IACC and Private International Law: Articles 3 thru 48 IACC) provided by Prof. Dr. Juliana Mörsdorf, LL.M. (Berkeley). Translation of Article 240 provided by Ute Reusch.  
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## **INTRODUCTORY ACT TO THE CIVIL CODE**

Introductory Act to the Civil Code in the version promulgated on 21 September 1994, Federal Law Gazette [Bundesgesetzblatt] I p. 2494, last amended by Article 2 of the Act of 25 June 2021 (Federal Law Gazette I p. 2133); Article 240 last amended by Article 10 of the Act of 22 December 2020 (Federal Law Gazette I, p. 3328).

### **PART 1 GENERAL PROVISIONS**

#### **Division 1**

#### **Entry into force. Reserve for the law of a Land. Definition of Statute**

##### **Art. 1**

(1) The Civil Code enters into force on January 1st, 1900, along with a statute concerning amendments to an Act on the Constitution of the Courts, the Code of Civil Procedure and the Code of Insolvency, a Statute on Compulsory Auction and Sequestration, a Code of Registration of Real Property, and a Statute on the Procedure of Non-Contentious Matters.

(2) Insofar as, in the Civil Code or in this Act, the regulation is reserved for the Statutes of a Land or insofar as it is ordered, that the provisions of the law of a Land remain unaffected or can be decreed, the existing provisions of the law of the Land will continue to be in force and the Land can decree new statutory provisions.

##### **Art. 2**

“Statute” under the Civil Code and under this Act means any legal rule.

#### **Division 2 Private International Law**

### **CHAPTER 1 GENERAL PROVISIONS**

### **Art. 3**

#### **Scope; Relationship with rules of the European Union and with international conventions**

Unless

1. immediately applicable rules of the European Union in their respective pertaining version, particularly
  - a) the Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II),
  - b) the Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I),
  - c) Article 15 of the Regulation 4/2009 of the Council of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, and
  - d) the Regulation (EU) No. 1259/2010 of the Council of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation,
  - e) the Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession,
  - f) Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes
  - g) Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships, or
2. rules in international conventions, insofar as they have become directly applicable in national law,

are relevant, the applicable law is to be determined, where the facts of a case have a connection with a foreign State, by the provisions of this chapter (private international law).

### **Art. 4**

#### **Renvoi; split law**

(1) If referral is made to the law of another State, the private international law of that State shall also be applied, insofar as this is not incompatible with the meaning of the referral. If the law of another State refers back to German law, the German substantive provisions shall apply.

(2) Referrals to substantive provisions relate to legal rules of the applicable legal system by the exclusion of its private international law. Where the parties can

choose the law of a certain State, that choice may only relate to the substantive provisions.

(3) If referral is made to the law of a State having several partial legal systems, without indicating the applicable one, then the law of that State will determine which partial legal system shall be applicable. Failing any such rules, the partial legal system to which the connection of the subject matter is closest shall be applied.

#### **Art. 5**

##### **Personal statute**

(1) If referral is made to the law of a State of which a person is a national and where this person is a bi- or multinational, the law applicable shall be that of the State with which the person has the closest connection, especially through his or her habitual residence or through the course of his or her life. If such person is also a German national, that legal status shall prevail.

(2) If a person is stateless or if his nationality cannot be identified, the law of that State is applicable in which the person has his or her habitual residence or, in the absence thereof, his or her residence.

(3) If referral is made to the law of a State in which a person has his or her residence or habitual residence and a person without or under restricted capacity to contract changes his or her residence without the consent of his or her legal representative, the application of another law does not ensue from this change alone.

#### **Art. 6**

##### **Public policy (ordre public)**

A provision of the law of another State shall not be applied where its application would lead to a result which is manifestly incompatible with the fundamental principles of German law. In particular, inapplicability ensues, if its application would be incompatible with civil rights.

### **CHAPTER 2**

#### **RIGHTS OF NATURAL PERSONS AND LEGAL TRANSACTIONS**

#### **Art. 7**

##### **Legal capacity and capacity to contract**

(1) The legal capacity and capacity to contract of a person are governed by the law of the State of which the person is a national. This is also applicable where the capacity to contract is extended by marriage.

(2) The once acquired legal capacity or capacity to contract shall not be lost or restricted by the acquisition or loss of legal status as a German national.

#### **Art. 8**

##### **Agency**

(1) Agency is governed by the law chosen by the principal before the exercise of the authority, if the choice is known to the third party and the agent. The principal, the agent and the third party may at any time choose the applicable law. A choice made under sentence 2 prevails over a choice made under sentence 1.

(2) Where the law applicable to the agency has not been chosen in accordance with paragraph 1 and the agent is acting in exercise of his professional activity, the substantive provisions of the state in which the principal has his habitual residence at the time of the exercise of the authority shall be applied, unless this place is not evident to the third party.

(3) Where the law applicable to the agency has not been chosen in accordance with paragraph 1 and the agent is acting as an employee of the principal, the substantive provisions of the state in which the principal has his habitual residence at the time of the exercise of the authority shall be applied, unless this place is not evident to the third party.

(4) Where the law applicable to the agency has not been chosen in accordance with paragraph 1 and the agent is acting neither in the exercise of his professional activity nor as an employee of the principal, and if the authority is long-term, the substantive provisions of the state in which the agent ordinarily exercises the authority shall be applied, unless this place is not evident to the third party.

(5) If the applicable law does not follow from paragraphs 1 to 4, the substantive provisions of the state, in which the agent uses his authority in the particular case (place of usage) shall be applied. If the third party and the agent had constructive notice that the authority was to be used only in one particular state, the substantive provisions of that state are applicable. Where the place of usage is not evident to the third party, the substantive provisions of the state, in which the principal has his habitual residence at the time of the exercise of the authority, are applicable.

(6) Agency in cases of conveyances of land or titles in land is governed by the law determined by Article 43 paragraph 1 and Article 46.

(7) This Article does not apply to agency in cases of stock market transactions and auctions.

(8) The determination of the place of habitual residence within the meaning of this Article is governed by Article 19 paragraph 1 and 2 first alternative of Regulation (EC) No. 593/2008, insofar as the conclusion of the contract is substituted by the exercise of the authority. Article 19 paragraph 2 first alternative of Regulation (EC) No. 593/2008 shall not be applied where the relevant place is not evident to the third party.

#### **Art. 9 Declaration of death**

A declaration of death, the determination of death and of the time of death as well as presumptions of life and death are governed by the law of the State of which the missing person was a national at the latest point in time at which the person was still alive according to the available information. If the missing person was at this time a foreign national, the person may be declared dead pursuant to the German law if there is a justified interest therefore.

#### **Art. 10 Name**

(1) The name of a person is governed by the law of the State of which the person is a national.

(2) At or subsequent to the conclusion of marriage, the spouses may, by a declaration given before the Registrar's of Births, Marriages and Deaths Office choose the name they will use thereafter:

1. under the law of the State of which one of the spouses is a national, notwithstanding Article 5 paragraph 1; or
2. under German law, if one of them has his habitual residence within the country.

If the declaration is made subsequent to the conclusion of the marriage, it needs to be publicly certified. As to the effect of the choice on the name of a child, § 1617 c of the Civil Code shall apply *mutatis mutandis*.

(3) The person having the parental authority may declare before the Registrar's of Births, Marriages and Deaths Office, that the child shall obtain the family name

1. pursuant to the law of a State of which one of the parents is a national, without regard to Article 5 paragraph 1; or
2. pursuant to German law, if one of the parents has his or her habitual residence within the country; or
3. pursuant to the law of a State of which a person conferring the name is a national

Declarations made subsequent to the issuing of a birth certificate need to be publicly certified.

**Art. 11**  
**Form of legal acts**

(1) A legal act is formally valid if it satisfies the formal requirements of the law which is applicable to the legal relationship forming the subject matter of the legal act, or the law of the State in which the act is performed, are observed.

(2) If a contract is concluded between persons who are in different countries, it shall be formally valid if it observes the formal requirements of the law which is applicable to the legal relationship forming the subject matter of the contract, or of the law of one of these countries.

(3) If the contract is made by an agent, the determinant for the application of paragraphs 1 and 2 is the State where the agent acts.

(4) Contracts, the subject matter of which is a right in immovable property or a right to use immovable property, are subject to the mandatory formal requirements of the law of the State where the property is situated, if by that law those rules are applicable irrespective of the place of conclusion of the contract or the law governing the contract.

(5) A legal transaction creating or transferring a right in rem is formally valid only if it observes the formal requirements of the law that is applicable to the legal relationship forming the subject matter of the legal act.

**Art. 12**  
**Protection of the other party**

In a contract concluded between persons who are in the same State, a natural person who would have capacity under the substantive provisions of the law of that State may invoke his incapacity resulting from the substantive provisions of another law only if the other party to the contract was aware or should have been aware of this incapacity at the time of the conclusion of the contract. This does not apply to legal transactions under family law and the law of succession neither to dispositions relating to immovable property situated in another State.

**CHAPTER 3**  
**FAMILY LAW**

**Art. 13**  
**Marriage**

(1) The conditions for the conclusion of marriage are, as regards each person engaged to be married, governed by the law of the State of which he or she is a national.

(2) If under this law, a requirement is not fulfilled, German law shall apply to that extent, if:

1. the habitual residence of one of the persons engaged to be married is within the country or one of them is a German national;
2. the persons engaged to be married have taken reasonable steps to fulfill the requirement; and
3. it is incompatible with the freedom of marriage to refuse the conclusion of the marriage; in particular, the previous marriage of a person engaged to be married shall not be held against him or her if it is nullified by a decision issued or recognized here or the spouse of the person engaged to be married has been declared dead.

(3) If the nubility of a person engaged to be married is governed, according to paragraph 1, by foreign law, the marriage is, according to German law,

1. invalid, if the person engaged to be married has not completed his or her 16th year at the time when the marriage was celebrated, and
2. voidable, if the person engaged to be married has completed his or her 16th, but not completed his or her 18th year at the time when the marriage was celebrated.

(4) A marriage within the country may only be celebrated subject to the form provided for here. A marriage between two persons engaged to be married, neither of whom is a German national, may however be celebrated before a person properly authorized by the government of the State of which one of the persons engaged to be married is a national, according to the formalities prescribed by the law of that State; a certified copy of the registration of the marriage in the Register of Births, Deaths and Marriages, kept by the person properly authorized therefore, furnishes conclusive evidence of the marriage celebrated in that manner.

#### **Art. 14**

##### **General effects of marriage**

(1) Insofar as the general effects of the marriage do not fall within the scope of application of Regulation (EU) 2016/1103, they are governed by the law chosen by the spouses, provided that that law is one of the following:

1. the law of the State in which both spouses have, at the time when the choice of the applicable law is made, their habitual residence,
2. the law of the State in which both spouses have had their habitual residence lastly during the marriage, if one of them still has his or her habitual residence there at the time when the choice of the applicable law is made, or,
3. without regard to the provisions of Article 5 paragraph 1, the law of the State of which one of the spouses is a national at the time when the choice of the applicable law is made.

The choice of law must be notarially certified. If it is not performed within the country, it is sufficient if the formal requirements of a marriage contract under the law chosen or of the place where the choice of law is made are observed.

(2) If the spouses have not agreed to designate the applicable law,

1. the law of the State in which both spouses have their habitual residence; otherwise
2. the law of the State in which both spouses have had their habitual residence lastly during the marriage, if one of them still has his or her habitual residence there, otherwise,
3. the law of the State of which both spouses are nationals, otherwise,
4. the law of the state with which both spouses are jointly most closely connected,

is applicable.

**Art. 15**  
**[deleted]**

[now see Regulation (EU) 2016/1103]

**Art. 16**  
**[deleted]**

**Art. 17**

**Special provisions concerning divorce**

(1) Insofar as property consequences of divorce do not fall within the scope of application of Regulation (EU) 2016/1103 or Regulation (EC) No. 4/2009 and are not subject to other rules of this subsection, they shall be governed by the law applicable to the divorce according to Regulation (EU) No. 1259/2010.

(2) Divorces that do not fall within the scope of application of Regulation (EU) No. 1259/2010 shall be subject to the rules of chapter II of that Regulation with the proviso that

1. article 5, paragraph 1, letter d, of Regulation (EU) No. 1259/2010 is not applicable;
2. in article 5, paragraph 2, article 6, paragraph 2, and article 8, letters a to c, of Regulation (EU) No. 1259/2010, the time the divorce proceeding is initiated is relevant instead of the time the court is seized;
3. departing from article 5, paragraph 2, of Regulation (EU) No. 1259/2010, the spouses may also conclude an agreement designating the applicable law during the course of the proceeding if the applicable law provides for this, and insofar as they respect the form provided for in article 7 of that Regulation;
4. in the case of article 8, letter d, of Regulation (EU) No. 1259/2010 the law of the State with which the spouses are otherwise most closely connected will be applied instead of the law of the State where the court is seized, and
5. article 6 applies instead of articles 10 and 12 of Regulation (EU) No. 1259/2010.

(3) Within the country a divorce may only be decreed by a court.

(4) The equalization of pension rights of husband and wife is governed by the law applicable under paragraph 1 first sentence; it shall only be carried out if accordingly German law is applicable and if such equalization is recognized by the law of one of the countries of which the spouses were nationals at the time when the divorce petition was served. Otherwise, the equalization of pension rights of husband and wife shall be carried out pursuant to German law on application of a spouse, if one of the spouses has acquired during the subsistence of the marriage a pension right with an inland pension fund, insofar as carrying out the equalization of pension rights would not be inconsistent with equity, in particular in light of the economic circumstances of both sides during the entire time of the marriage.

#### **Art. 17a**

##### **Marital home**

Prohibitions as to trespass, approaching and contact pertaining to the marital home that is located within the country are governed by German substantive law.

#### **Art. 17b**

##### **Registered life partnership and same sex marriage**

(1) The formation of a registered life partnership, its dissolution and those of its general effects that do not fall under Regulation (EU) 2016/1104 are governed by the substantive provisions of the State in which the life partnership is registered. The equalization of pension rights is governed by the law applicable under sentence 1; it shall only be carried out if accordingly German law is applicable and if the law of one of the countries, whose nationals the life partners are at the time when the application for termination of the life partnership is filed, recognizes an equalization of pension rights of life partners. Otherwise, it shall be carried out pursuant to German law on application of a life partner, if one of the life partners has acquired during the subsistence of the life partnership a pension right with an inland pension fund, insofar as carrying out the equalization of pension rights would not be inconsistent with equity, in particular in light of the economic circumstances of both sides during the entire time of the life partnership.

(2) Article 10 paragraph 2 and Article 17a shall apply *mutatis mutandis*.

(3) If a life partnership between the same persons is registered in different States, the effects specified in paragraph 1 shall, from the time of its registration on, be determined on the basis of the last life partnership entered into.

(4) If the spouses are of equal sex, or if at least one of them is neither female nor male, paragraphs 1 to 3 apply *mutatis mutandis* with the proviso that divorce and legal separation underlie the law applicable according to Regulation (EU) No. 1259/2010. The property consequences are subject to the law applicable according to Regulation (EU) 2016/1103.

(5) The marriages referred to in paragraph 4 are subject *mutatis mutandis* to article 13, paragraph 3, article 17, paragraphs 1 to 3, article 19, paragraph 1, sentence 3, article 22, paragraph 1, sentence 2, and paragraph 3, sentence 1, as well as article 46e. For the general effects of their marriage, the spouses can conclude an agreement designating the applicable law pursuant to article 14.

#### **Art. 18**

**[deleted]**

[now see Art. 15 EU Regulation on Maintenance Obligations in conjunction with the 2007 Hague Protocol on Maintenance Obligations in conjunction with the Council Decision mentioned in Art 3, see above]

**Art. 19**  
**Descent**

(1) The descent of a child is governed by the law of the place where the child has his or her habitual residence. In relation to each parent the descent can also be determined by the law of the State of this parent's nationality. If the mother is married, the descent can also be determined by the law that governs the general effects of the marriage under Article 14 paragraph 1 at the time of the birth of the child; if the marriage was dissolved before by death, the relevant time is the time of dissolution.

(2) If the parents are not married to each other, the obligations of the father towards the mother because of the pregnancy are governed by the law of the State of the mother's habitual residence.

**Art. 20**  
**Challenge of the descent**

The descent can be challenged according to any one of the laws that govern its preconditions. The child, in any event, can challenge the descent under the law of his or her habitual residence.

**Art. 21**  
**Effects of parent-child-relationship**

The legal relationship between a child and her parents is governed by the law of the State in which the child is habitually resident.

**Art. 22**  
**Adoption**

(1) The adoption of a child within the country is governed by German law. Otherwise, it is governed by the law of the State in which the adopter has his or her habitual residence at the time of the adoption.

(2) The consequences as to the legal relationship between the child and the adopter and the persons, to whom the child has a legal relationship within the meaning of family law, are governed by the law that is determined by paragraph 1.

(3) With respect to succession to the adopter, his spouse, life partner or relatives, the adoptee, irrespective of the law applicable according to paragraphs 1 and 2 has a position equal to the one of a child adopted under German substantive rules, if the deceased had decreed this by way of a will and if the succession is governed by German law. Sentence 1 shall apply *mutatis mutandis*, if the adoption is based on a foreign decision. Sentences 1 and 2 don't apply, if the adoptee is 18 years or older at the time of the adoption.

**Art. 23**  
**Consent**

The necessity and the granting of the consent of the child, and of a person who is related to the child under family law, to a declaration of descent, to conferring a name, or to an adoption are additionally governed by the law of the State of which the child is a national. Where the best interest of the child so requires, German law shall be applied instead.

**Art. 24**

**Guardianship, protective care and curatorship**

- (1) The creation, modification and termination of guardianship, protective care and curatorship, as well as the substance of legal guardianship and curatorship, are governed by the law of the State of which the ward, the person under protective care or the charge, is a national. A guardian may be appointed pursuant to German law for a foreign national who has his or her habitual residence or, in the absence thereof, his or her residence within the country.
- (2) If a curatorship is required due to the fact that it is not clear who is a party to an issue, or because a party is presently in another State, the law applicable is the one that governs the issue.
- (3) Interim measures as well as the substance of protective care and the ordered guardianship and curatorship are governed by the law of the State which issued the order.

**CHAPTER 4  
SUCCESSION**

**Art. 25  
Succession**

Insofar as the succession does not fall within the scope of application of Regulation (EU) No. 650/2012 chapter III of this Regulation shall apply *mutatis mutandis*.

**Art. 26**

**Form of dispositions mortis causa (wills)**

- (1) In implementation of Article 3 of the Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions (Federal Law Gazette 1965 II p 1144, 1145) a testamentary disposition, also when it is made by several persons in the same document or when an earlier testamentary disposition is revoked by it, is valid as regards form if its form complies with the formal requirements of the law which governs the succession or would govern at the time when the disposition was made.
- (2) The form of other dispositions mortis causa is governed by the law determined by Article 27 of the Regulation (EU) No. 650/2012.

**CHAPTER 5  
OBLIGATIONS**

**Art. 27-37  
[deleted]**

[now see Rome I Regulation]

**Art. 38  
Unjust enrichment**

- (1) Claims of unjust enrichment arising out of rendered performance are governed by the law that governs the underlying legal relationship to which the performance is related.
- (2) Claims of unjust enrichment arising out of an infringement to a protected interest are governed by the law of the State, where the infringement occurred.
- (3) In other cases claims of unjust enrichment are governed by the law of the State, in which the enrichment took place.

**Art. 39**  
**Negotiorum gestio**

- (1) Legal claims arising out of acts performed without due authority in connection with the affairs of another person are governed by the law of the State in which the transaction was performed.
- (2) Claims deriving from satisfying debts of another person are governed by the law that governs the debt.

**Art. 40**  
**Tort**

- (1) Tort claims are governed by the law of the State in which the liable party has acted. The injured party can demand that instead of this law, the law of the State in which the injury occurred is to be applied. The option can be used only in the first instance court until the conclusion of the pretrial hearing or until the end of the written preliminary procedure.
- (2) If, at the time of the occurrence of the event underlying the liability, the liable party and the injured party both are habitually resident in the same State, the law of that State shall apply. For companies or firms and other bodies incorporate or unincorporate, the principal establishment, or where a branch is involved, this establishment, shall be treated as the place of the habitual residence.
- (3) Claims governed by the law of another State cannot be raised insofar as they
1. go substantially beyond what is necessary for an adequate compensation of the injured party,
  2. obviously serve purposes other than an adequate compensation of the injured party or
  3. collide with liability rules under a convention in force in the Federal Republic of Germany.
- (4) The injured party may bring his or her claim directly against the insurer of the person liable to provide compensation if the applicable tort law or the law applicable to the insurance contract so provides.

**Art. 41**  
**Substantially closer connection**

- (1) If there is a substantially closer connection with the law of a State other than that applicable under articles 38 to 40 paragraph 2, then the law of that other State shall apply.
- (2) A substantially closer connection may be based in particular
1. on a special legal or factual relationship between the persons involved in connection with the obligation or
  2. in the cases of Article 38 paragraphs 2 and 3 and of Article 39 on the fact, that the persons involved had their habitual residences in the same State at the time of the pertaining facts; Article 40 paragraph 2 sentence 2 shall apply *mutatis mutandis*.

**Art. 42**  
**Choice of law by the parties**

After the event giving rise to a non-contractual obligation occurred, the parties may agree to submit it to the law of their choice. Rights of third parties shall not be prejudiced.

## **CHAPTER 6 PROPERTY**

### **Art. 43 Rights in rem**

- (1) Interests in property are governed by the law of the State in which the property is situated.
- (2) If an item, to which property interests attach, gets into another State, these interests cannot be exercised in contradiction to the legal order of that State.
- (3) If a property interest in an item that is removed from another State to this country, has not been acquired previously, as to such acquisition in the country, facts that took place in another State are considered as if they took place in this country.

### **Art. 44 Intromissions emanating from real property**

As to claims arising from adverse impacts that proceed from a plot of land, the provisions of Regulation (EC) No. 864/2007 except for chapter III shall apply *mutatis mutandis*.

### **Art. 45 Means of transport**

- (1) Interests in airborne, waterborne and rail borne vehicles are governed by the law of the State of origin. This is
  1. as to aircrafts the State of their nationality,
  2. as to watercrafts the State where they are registered, otherwise the home port or home location,
  3. as to rail vehicles the State of registration.
- (2) The coming into existence of statutory security interests in these vehicles is subject to the law applicable to the underlying claim. The ranking among several securities follows Article 43 paragraph 1.

### **Art. 46 Substantially closer connection**

If there is a substantially closer connection with the law of a State other than that which would apply under articles 43 and 45, then that law shall apply.

## **CHAPTER 7 SPECIAL PROVISIONS EXECUTING AND IMPLEMENTING RULES ON PRIVATE INTERNATIONAL LAW OF THE EUROPEAN UNION**

### **Subchapter 1 Execution of Regulation (EC) No. 864/2007**

#### **Art. 46a Environmental damage**

The person sustaining damage can invoke his or her right under Article 7 of the Regulation (EC) No. 864/2007 to base his or her claim on the law of the State in

which the event giving rise to the damage occurred, only in the first instance court until the conclusion of the pretrial hearing or until the end of the written preliminary procedure.

**Subchapter 2**  
**Implementation of Rules on Private International Law in the Field of Consumer Protection**

**Art. 46b**

**Consumer protection for particular areas**

(1) If a contract, due to choice of law, is governed by the law of a State which is neither a Member State of the European Union, nor another Contracting State of the Agreement on the European Economic Area, yet if the contract shows a close connection to the area of one of these states, then the provisions of this particular state that have been adopted in implementation of the consumer protection directives are nevertheless applicable.

(2) A close connection must be assumed particularly where the professional

1. carries on a professional or commercial activity in a Member State of the European Union or in a Contracting State of the Agreement on the European Economic Area in which the consumer has his or her habitual residence, or
2. directs such activity in some way towards this Member State of the European Union or towards another Contracting State of the Agreement on the European Economic Area or towards several states including this state,

and the contract falls within the scope of this activity.

(3) Consumer Protection Directives in the meaning of this Article are in their respectively updated version:

1. Directive 93/13/EEC of the Council of April, 5, 1993 on unfair terms in consumer contracts (OJ EC No. L 95 of 21.4.1993, p. 29)
2. Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ EC No. L 271 of 2002, p. 16)
3. Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ EC No. L 133 of 22.5.2008, p. 66)

(4) If a timeshare contract, a long-term holiday product contract, a resale contract or an exchange contract in the meaning of Art 2 para. 1 (a) to (d) of Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (OJ L 33 of 3.2.2009, p. 10) is governed by the law of a State which is neither a Member State of the European Union, nor another Contracting State of the Agreement on the European Economic Area, then the consumers shall not be deprived of the protection granted in implementation of this directive, if

1. any of the immovable properties concerned is located in the sovereign territory of a Member State of the European Union or of another Contracting State of the Agreement on the European Economic Area, or
2. in the case of a contract not directly related to an immovable property, the professional pursues commercial or professional activities in a Member State of the European Union or another Contracting State of the Agreement on the European Economic Area or where he, by any means, directs such activities to such a state, and the contract falls within the scope of such activities.

**Art. 46c**

**Package travel and linked travel arrangements**

(1) Where an organiser of a travel, at the time of the conclusion of the contract, has his establishment within the meaning of § 4 paragraph 3 of the Trade Regulation Act neither in a Member State of the European Union nor in another Contracting State of the Agreement on the European Economic Area and

1. the organiser concludes package travel contracts in a Member State of the European Union or another Contracting State of the Agreement on the European Economic Area, or offers to conclude such contracts in one of these states, or
2. the organiser directs his activity within the meaning of number 1 towards a Member State of the European Union or another Contracting State of the Agreement on the European Economic Area

the substantive provisions that the State mentioned in number 1 or number 2 has enacted with a view to implement Article 17 of Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, shall be applied, if the contract falls within the scope of this activity.

(2) Where the trader of linked travel arrangements, at the time of the conclusion of the contract, has his establishment within the meaning of § 4 paragraph 3 of the Trade Regulation Act neither in a Member State of the European Union nor in another Contracting State of the Agreement on the European Economic Area and

1. facilitates package travel contracts in a Member State of the European Union or another Contracting State of the Agreement on the European Economic Area, or offers to trade such contracts there, or
2. directs his trading activity towards a Member State of the European Union or another Contracting State of the Agreement on the European Economic Area

the substantive provisions that the State mentioned in number 1 or number 2 has enacted with a view to implement Article 19 paragraph 1 in connection with Article 17 and Article 19 paragraph 3 of Directive (EU) 2015/2302, shall be applied, if the contracts falls within the scope of this activity.

(3) Where the trader of linked travel arrangements, at the point in time relevant under Article 251 § 1, has his establishment within the meaning of § 4 paragraph 3

of the Trade Regulation Act neither in a Member State of the European Union nor in another Contracting State of the Agreement on the European Economic Area and directs his trading activity towards a Member State of the European Union or another Contracting State of the Agreement on the European Economic Area, the substantive provisions that the State towards which the trading activity is directed has enacted with a view to implement Article 19 paragraphs 2 and 3 of Directive (EU) 2015/2302, shall be applied, if the envisaged contracts falls within the scope of this activity.

**Subchapter 3**  
**Execution of Regulation (EC) No. 593/2008**

**Art. 46d**

**Compulsory insurance contracts**

(1) An insurance contract, covering risks for which a Member State of the European Union or another Contracting State of the Agreement on the European Economic Area has established an obligation to insure, is governed by the law of this state provided that this law holds itself applicable.

(2) A contract on a compulsory insurance is governed by German law, if the statutory obligation to conclude the contract is based on German law.

**Subchapter 4**  
**Execution of Regulation (EU) No. 1259/2010**

**Art. 46e**

**Choice of applicable law**

(1) An agreement to designate the applicable law made pursuant to Article 5 of the Regulation (EU) No. 1259/2010 must be notarially certified.

(2) The spouses can designate the applicable law according to paragraph 1 until the end of the oral hearing in the first instance. § 127a of the Civil Code shall apply *mutatis mutandis*.

**Division 3**  
**Adaptation**

**Art. 47**

**First and Family Names**

(1) Where a person under an applicable foreign law has obtained a name and the name is henceforth governed by German law, the person may, by a declaration given before the Registrar of Births, Marriages and Deaths,

1. determine a first and a family name from out of the name
2. choose a first or a family name where such name does not exist
3. give up components of the name that German law does not provide for
4. adopt the original version of a name that has been modified according to the sex or the family relationship
5. accept a German version of his or her first or his or her family name; where such a version of his or her first name does not exist, he or she can accept new first names.

Where the name is a marital name or a life-partnership name, during the subsistence of the marriage or of the life partnership, only both spouses or life partners may give the declaration.

(2) Paragraph 1 is applicable *mutatis mutandis* as to the formation of a name under German law, if it is derived from a name which has been obtained under an applicable foreign law.

(3) § 1617c of the Civil Code shall apply *mutatis mutandis*.

(4) The declarations made under Paragraphs 1 and 2 need to be publicly authenticated or certified, unless they have been made before a German Registrar of Births, Marriages and Deaths.

#### **Art. 48**

##### **Choice of a name obtained in another Member State of the European Union**

Where the name of a person is subject to German law, that person can, by declaration before the Registrar of Births, Marriages and Deaths, choose a name that he or she obtained when he or she had habitual residence in another Member State of the European Union, where that name was registered in a register of civil status, unless this is manifestly incompatible with the fundamental principles of German law. The choice of name shall have retroactive effect from the date of the registration in the register of civil status of the other Member State, unless the person explicitly declares that the choice of name shall be effective for the future only. The declaration must be publicly certified or authenticated. Article 47 paragraphs 1 and 3 shall apply *mutatis mutandis*.

#### **Article 240**

##### **Contractual rules occasioned by the COVID-19 pandemic**

#### **Section 1**

##### **Moratorium**

(1) Consumers are entitled to refuse performance, until no later than 30 June 2020, of a claim in connection with a consumer contract which is a continuous obligation and which was concluded before 8 March 2020 where, as a consequence of circumstances which can be attributed to the multiplication of infections caused by the SARS-CoV-2 virus (COVID-19 pandemic), they would not be able to render performance without endangering their own decent livelihood or that of their dependants. The right to refuse performance applies to all essential continuous obligations. Continuous obligations are 'essential' if they are necessary so that consumers are adequately supplied with services of general interest.

(2) A 'microenterprise' within the meaning of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36) is entitled to refuse performance, until no later than 30 June 2020, of a claim in connection with a contract which was concluded before 8 March 2020 where, as a consequence of circumstances which can be attributed to the COVID-19 pandemic,

1. the enterprise is unable to render performance or
2. the enterprise would not be able to render performance without endangering the economic foundations of its business undertaking.

The right to refuse performance applies to all essential continuous obligations. Continuous obligations are 'essential' if they are necessary to ensure a supply of services which is adequate to continue the business undertaking.

(3) Subsection (1) does not apply if it is, in turn, unreasonable to expect the creditor to accept the exercise of the right to refuse performance because non-performance would endanger the economic foundations of his or her business undertaking.

Subsection (2) does not apply if it is unreasonable to expect the creditor to accept the exercise of the right to refuse performance because non-performance would endanger his or her own decent livelihood or that of his or her dependants or the economic foundations of his or her business undertaking. Where the right to refuse performance under sentence 1 or 2 is ruled out, the debtor has the right to terminate the contract.

(4) Further, subsections (1) and (2) do not apply in connection with

1. leases and usufructuary leases pursuant to section 2, loan agreements and
2. entitlements under labour law.

(5) Derogations from subsections (1) and (2) which are prejudicial to the debtor are not permissible.

## **Section 2**

### **Restrictions on the termination of leases and usufructuary leases**

(1) Landlords are not permitted to terminate leases for land or premises merely on the ground that the tenant does not make a rental payment in the period from 1 April 2020 to 30 June 2020 despite its being due, insofar as non-payment is due to the effects of the COVID-19 pandemic. The link between the COVID-19 pandemic and non-payment must be satisfactorily demonstrated. Other rights of termination remain unaffected.

(2) Derogations from subsection (1) which are prejudicial to the lessee are not permissible.

(3) Subsections (1) and (2) apply accordingly to usufructuary leases.

(4) Subsections (1) to (3) only apply until 30 June 2022.

## **Section 3**

### **Rules relating to the law concerning loans**

(1) As regards consumer loan agreements which were concluded before 15 March 2020, claims on the part of the lender to repayment and payments of interest or of the principal which are due in the period from 1 April 2020 to 30 June 2020 are granted a deferral of payment for a period of three months as from the due date if the consumer suffers a loss of revenue due to the extraordinary circumstances which have arisen as a consequence of the spread of the COVID-19 pandemic which means that it is unreasonable to expect the consumer to make the contractually agreed payment. Performance is, in particular, unreasonable if the consumer's own decent livelihood or that of his or her dependants is endangered thereby. During the period referred to in sentence 1, consumers may continue making payments on the originally agreed due dates. Where consumers continue to make payments as contractually agreed, the deferral of payment set out in sentence 1 is deemed not to apply.

(2) The contracting parties are permitted to make arrangements which deviate from subsection (1), in particular concerning possible part payments, adjustments to repayments of interest or of the principal, or debt restructuring.

(3) Terminations of agreements on the part of the lender on account of a default in payment, due to a significant worsening of the consumer's financial circumstances or the value of the security rendered for the loan are ruled out in the case of subsection (1) up until the end of the period of deferral of payment. Derogations which are prejudicial to the consumer are not permissible.

(4) The lender is to offer the consumer a meeting to discuss the possibility of reaching an agreement and possible support measures. Means of distance communication may also be used to that end.

(5) Where no agreement can be reached for the period after 30 June 2020, the contract term is extended by three months. The due dates in respect of contractual performance are deferred for the duration of that period. The lender is to make a copy of the contract which incorporates the agreed contractual changes or the contractual changes resulting from sentence 1 and from subsection (1) sentence 1 available to the consumer.

(6) Subsections (1) to (5) do not apply if it is unreasonable to expect the lender to accept the deferral of payment or the preclusion of termination of the agreement after giving due consideration to all the circumstances of the individual case, including the changes to the general circumstances of life brought about by the COVID-19 pandemic.

(7) Subsections (1) to (6) apply accordingly to the adjustment of payments and recourse among joint and several debtors pursuant to section 426 of the Civil Code (*Bürgerliches Gesetzbuch*).

(8) The Federal Government is authorised, by way of statutory instrument requiring the approval of the Bundestag and not requiring the approval of the Bundesrat, to amend the group of persons to whom subsections (1) to (7) apply and, in particular, to include in their scope of application microenterprises within the meaning of Article 2 (3) of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

#### **Section 4**

##### **Authorisation to issue statutory instruments**

(1) The Federal Government is authorised, by way of statutory instrument not requiring the approval of the Bundesrat,

1. to extend the duration of the right to refuse performance pursuant to section 1 until no later than 30 September 2020,
2. to extend the restriction as to terminations set out in section 2 (1) and (3) to outstanding payments arising in the period from 1 July 2020 and no later than 30 September 2020,
3. to extend the period set out in section 3 (1) until 30 September 2020 and the extension of the contract term set out in section 3 (5) to up to 12 months

where it is to be expected that social life, the economic activity of a large number of enterprises or the gainful employment of a large number of persons will continue to be significantly adversely affected as a consequence of the COVID-19 pandemic.

(2) The Federal Government is authorised, by way of statutory instrument requiring the approval of the Bundestag and not requiring the approval of the Bundesrat, to extend the periods set out in subsection (1) beyond 30 September 2020 if the adverse effects continue to exist even after the statutory instrument referred to in subsection (1) has entered into force.

## **Section 5**

### **Voucher for recreational events and recreational facilities**

- (1) Where a music, cultural, sports or other recreational event could not or cannot take place on account of the COVID-19 pandemic, the organiser of the event is entitled to present the holder of an admission ticket or other permit purchased before 8 March 2020 with a voucher instead of refunding the price of admission or other fee. If the admission ticket or other permit entitles the holder to participate in several recreational events and only a part of these events could or can take place, the organiser of the event is entitled to present the holder with a voucher to the value of that part which was or is not used.
- (2) Where a music, cultural, sports or other recreational facility was or is forced to close on account of the COVID-19 pandemic, the operator of the facility is entitled to present the holder of an access pass purchased before 8 March 2020 with a voucher instead of refunding the fee.
- (3) The value of the voucher must cover the entire price of admission or entire other fee, including any advance booking fees. No costs may be charged for issuing and shipping the voucher.
- (4) The voucher must indicate
1. that it was issued on account of the COVID-19 pandemic and
  2. that the holder of the voucher may demand payment of the value of the voucher under one of the conditions set out in subsection (5).
- (5) Holders of a voucher issued in accordance with subsection (1) or (2) may demand that the organiser of the event or operator of the facility pay them the value of the voucher if
1. it is unreasonable, in view of their personal circumstances, to expect them to accept a voucher or
  2. they have not redeemed the voucher by 31 December 2021.

## **Section 6**

### **Travel voucher; authorisation to issue statutory instruments**

- (1) Where a traveller or an organiser of package travel, a package holiday or package tour ('package') withdraws from a package contract under section 651h (1), (3) and (4) sentence 1 no. 2 of the Civil Code on account of the COVID-19 pandemic, and the contract was concluded before 8 March 2020, then the organiser of the package may offer the traveller a travel voucher instead of refunding the price of the package. This option is also open to the organiser of the package if withdrawal, under the conditions of sentence 1, was declared by the traveller or the organiser before the day on which this provision entered into force under Article 3 (1) sentence 1 of the Act of 10 July 2020 (Federal Law Gazette I, p. 1643) and the organiser of the package has not already repaid the price of the package. Travellers are free to choose whether to accept the organiser's offer or whether to exercise their right to be refunded the price of the package. The organiser must notify the traveller of this choice when making the offer. If a traveller has already accepted the organiser's offer before the day on which this provision entered into force under Article 3 (1) sentence 1 of the Act of 10 July 2020 (Federal Law Gazette I, p. 1643), which offer was made under the conditions of sentence 1, then the traveller may demand that the voucher be modified so that it meets the requirements of

subsections (2) and (3) or that it be exchanged for a voucher which meets the requirements of subsections (2) and (3).

(2) The value of the travel voucher must correspond to the advance payments made. No costs may be charged for issuing, shipping and redeeming the voucher.

(3) In addition to its value, the travel voucher must indicate

1. that it was issued on account of the COVID-19 pandemic,
2. how long it is valid for,
3. that the traveller may, under the conditions set out in subsection (5), demand that any advance payments made be refunded and
4. that the traveller is protected, under subsection (6), in the event of the organiser's insolvency and that any additional promises of performance made by the organiser are not covered by the insolvency protection.

(4) The travel voucher ceases to be valid on 31 December 2021 at the latest.

(5) Organisers of packages must immediately, within 14 days at the latest, refund travellers the price of any advance payments made if the traveller has not redeemed the voucher before it ceases to be valid.

(6) Should the organiser of the package become illiquid, insolvency proceedings be opened against its assets or a petition to commence insolvency proceedings be rejected for lack of assets, travellers may demand an immediate refund of any advance payments made from the customer deposit insurer referred to in the package contract pursuant to Article 250 section 6 (2) no. 3; the provision of section 651r of the Civil Code applies to that extent. If the customer deposit insurer has limited its liability for the total amounts to be refunded within the course of one business year to 110 million euros and has, therefore, only satisfied the traveller's claim on a pro rata basis in accordance with section 651r (3) sentence 4 of the Civil Code, then the traveller may, on the basis of the travel voucher, demand repayment of the remainder of the advance payments from the Federal Republic of Germany. The traveller must provide proof of the amount of the refund which has already been received. If the Treasury satisfies the traveller's claims, then claims against the organiser of the package and the customer deposit insurer transfer to the Treasury. In all other cases, the Treasury may make the refund dependent on the traveller assigning, to the Treasury, any claims to a refund against a third party which are not covered by sentence 4.

(7) In view of the additional state protection afforded to the voucher under subsection (6) sentence 2, the Federal Republic of Germany may levy a guarantee premium from the organiser of the package.

(8) The Federal Government is authorised to regulate, by way of statutory instrument not requiring the approval of the Bundesrat, details concerning the refund procedure and the levying of guarantee premiums.

(9) The Federal Ministry of Justice and Consumer Protection is the competent agency as regards the refund referred to in subsection (6) sentence 2 to sentence 5. The Federal Ministry of Justice and Consumer Protection may delegate this task to the Federal Office of Justice. The Federal Ministry of Justice and Consumer Protection or the Federal Office of Justice may avail itself of the services of suitable third parties in the fulfilment of its tasks. In the context of the fulfilment of these tasks, the task of effecting payment is also transferred to the agency competent for the refund procedure in its capacity as agency competent for payments in

accordance with section 70 of the Federal Budget Code (*Bundeshaushaltsordnung*). Should the competent agency avail itself of the services of a third party in the fulfilment of its tasks, it may also, in its capacity as agency competent in accordance with section 70 of the Federal Budget Code, delegate to that third party the effecting of payment. The necessary provisions of the Federal Budget Code and the implementing provisions issued in relation to them are to be applied accordingly to that extent. Further details are determined in agreement with the Federal Ministry of Finance.

(10) The organiser of the package may only rely, vis-à-vis the retailer, on the package contract which was sold no longer existing if the organiser is required to pay out the value of the travel voucher.

#### **Section 7**

##### **Interference with the basis of the transaction in relation to rental and lease contracts**

(1) Where, as a consequence of government measures to combat the COVID-19 pandemic, leased land or leased premises which are not residential premises cannot be used for the tenant's operations or only with significant restrictions, the presumption is made that a circumstance within the meaning of section 313 (1) of the Civil Code which became the basis of the rental contract has significantly changed since the contract was entered into.

(2) Subsection (1) applies accordingly to lease contracts.