

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 47 EGBGB) durch Dr. Juliana Mörsdorf-Schulte LL.M. (Univ. of California, Berkeley)

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 47 IACC) provided by Dr. Juliana Mörsdorf-Schulte LL.M. (Univ. of California, Berkeley)

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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 17 of the Act of 20 November 2015,
Federal Law Gazette I p. 2010

FIRST PART GENERAL PROVISIONS

First Chapter

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.

Second Chapter Private International Law

FIRST SECTION 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, 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 country, by the provisions of this chapter (private international law).

Art. 3a

Referral to substantive provisions; single statute

- (1) Referrals to substantive provisions relate to legal rules of the applicable legal system by the exclusion of its private international law.
- (2) Where referrals in the third section make the property of a person subject to the law of a country, they shall not relate to items which are not located in that country and are governed by special provisions under the law of the country where they are located.

Art. 4

Renvoi; split law

- (1) If referral is made to the law of another country, the private international law of that country shall also be applied, insofar as this is not incompatible with the meaning of the referral. If the law of another country refers back to German law, the German substantive provisions shall apply.
- (2) Where the parties can choose the law of a certain country, that choice may only relate to the substantive provisions.
- (3) If referral is made to the law of a country having several partial legal systems, without indicating the applicable one, then the law of that country 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 country of which a person is a national and where this person is a bi- or multinational, the law applicable shall be that of the country 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 country 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 country 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 country 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.

SECOND SECTION

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 country 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

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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 country 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 country 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 country of which one of the spouses is a national, notwithstanding article 5 subarticle 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 country of which one of the parents is a national, without regard to article 5 subarticle 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 country 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 country 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 subarticles 1 and 2 is the country 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 country 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 country, a natural person who would have capacity under the substantive provisions of the law of that country 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 country.

THIRD SECTION 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 country 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) 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 country of which one of the persons engaged to be married is a national, according to the formalities prescribed by the law of that country; 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) The general effects of the marriage are governed by:

1. the law of the country of shared nationality of the spouses or last shared nationality during the marriage if one of them is still the national of that country, otherwise
2. the law of the country in which both spouses have their habitual residence or lastly had it during the marriage, if one of them still has his or her habitual residence there,
3. otherwise, the law of the country with which the spouses are jointly most closely connected.

(2) If one of the spouses has several nationalities, the spouses may choose the law of one of these countries, without regard to the provisions of article 5 subarticle 1, if the other spouse also has that nationality.

(3) The spouses may choose the law of the nationality of one spouse if the conditions of subarticle 1 no. 1 are not met and:

1. neither of the spouses is a national of the country in which both spouses have their habitual residence; or
2. the spouses do not have their habitual residence in the same country.

The effects of choice of law end if the spouses acquire a shared nationality.

(4) 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 of the choice of law are observed.

Art. 15

Matrimonial property regime

(1) The matrimonial property regime is governed by the law governing the general effects of the marriage upon conclusion of the marriage.

(2) The spouses may choose for their matrimonial property regime:

1. the law of the country of which one of them is a national,
2. the law of the country in which one of them has his habitual residence,

3. as to real property the law of the country in which this is situated.
- (3) Article 14 subarticle 4 shall apply mutatis mutandis.
- (4) The provisions of the Act Concerning the Matrimonial Property of Displaced Persons and Refugees remain unaffected.

Art. 16

Protection of third parties

- (1) If the matrimonial regime is governed by the law of another country and one of the spouses has his or her habitual residence within the country or carries a trade therein, then § 1412 of the Civil Code shall apply mutatis mutandis; the foreign matrimonial regime is considered as one contracted for.
- (2) As to legal transactions undertaken within the country § 1357, as to personal property which is located in the country § 1362, and as to a business carried out for profit here, §§ 1431 and 1456 of the Civil Code shall be applied mutatis mutandis, insofar as these provisions are more advantageous to a bona fide third party than the foreign law.

Art. 17

Special consequences of divorce; decision by the court

- (1) Proprietary consequences of divorce, which are not governed by other rules of this subsection, shall be subject to the law applicable to the divorce according to the Regulation (EU) No. 1259/2010.
- (2) Within this country a divorce may only be decreed by a court.
- (3) The equalization of pension rights of husband and wife is governed by the law applicable under subarticle 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 and household goods

The right to use the marital home that is located in the country and the household goods that are in the country as well as pertaining prohibitions as to trespass, approaching and contact are governed by German substantive law.

Art. 17b

Registered life partnership

- (1) The formation of a registered life partnership, its general effects and property regime, as well as its dissolution are governed by the substantive provisions of the country 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 subarticle 2 and article 17a shall apply accordingly. If the general effects of the life partnership are governed by the law of another country, personal property that is located in this country shall be governed by § 8 subparagraph 1 of the Registered Partnership Act, and legal transactions that have taken place in this country shall be governed by § 8 subparagraph 2 of the Registered Partnership Act in connection with section 1357 of the Civil Code, insofar as these rules are more favorable to third parties acting in good faith as compared to the foreign law. If the property regime of the life partnership is governed by the law of another country, and if one of the partners has his or her habitual residence within the country or carries a trade therein, then § 7 sentence 2 of the Registered Partnership Act in connection with § 1412 of the Civil Code shall apply mutatis mutandis; the foreign matrimonial regime is considered as one contracted for.

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

(4) The effects of a life partnership registered abroad shall not exceed those arising under the provisions of the German Civil Code and the Registered Partnership Act.

Art. 18
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[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 country 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 subarticle 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 country of the mothers 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 country in which the child has her habitual residence.

Art. 22
Adoption

- (1) The adoption of a child is governed by the law of the country of which the adopter is a national at the time of the adoption. The adoption by one or both spouses is governed by the law which applies to the general effects of the marriage under article 14 subarticle 1. The adoption by a life partner is governed by the law which applies to the general effects of the life partnership under article 17b subarticle 1 sentence 1.
- (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 subarticle 1.
- (3) With respect to succession to the adopter, his spouse, life partner or relatives, the adoptee, irrespective of the law applicable according to subarticles 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 country 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 country of which the ward, the person under protective care or the charge, is a national. A protector 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 country, 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 country which issued the order.

FOURTH SECTION
SUCCESSION

Art. 25
Succession

Insofar as succession doesn't 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.

FIFTH SECTION OBLIGATIONS

First Subsection Non-Contractual 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 country, where the infringement occurred.

(3) In other cases claims of unjust enrichment are governed by the law of the country, 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 country 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 country in which the liable party has acted. The injured party can demand that instead of this law, the law of the country 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 had their habitual residence in the same country, the law of that country 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 country 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 country other than that applicable under articles 38 to 40 subarticle 2, then the law of that other country 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 subarticles 2 and 3 and of article 39 on the fact, that the persons involved had their habitual residences in the same country at the time of the pertaining facts; article 40 subarticle 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.

SIXTH SECTION PROPERTY

Art. 43

Rights in rem

(1) Interests in property are governed by the law of the country in which the property is situated.

(2) If an item, to which property interests attach, gets into another country, these interests cannot be exercised in contradiction to the legal order of that country.

(3) If a property interest in an item that is removed from another country to this country, has not been acquired previously, as to such acquisition in the country, facts that took place in another country 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 country of origin. This is

1. as to aircrafts the country of their nationality,
2. as to watercrafts the country where they are registered, otherwise the home port or home location,

as to rail vehicles the country of licensing.

(2) The coming into existence of statutory security interests in these vehicles underlies the law applicable to the underlying claim. The ranking among several securities follows article 43 subarticle 1.

Art. 46

Substantially closer connection

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

SEVENTH SECTION

SPECIAL PROVISIONS IMPLEMENTING RULES OF THE EUROPEAN UNION ACCORDING TO ARTICLE 3 No. 1

First Subsection

Implementation 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 country 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.

Second Subsection

Implementation of Regulation (EC) No. 593/2008

Art. 46b

Consumer protection for particular areas

(1) If a contract, due to choice of law, is governed by the law of a country 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 adopted in implementation of the consumer protection directives are nevertheless applicable.

(2) A close connection must be assumed particularly where the entrepreneur^[1]

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.

^[1]The notion of „entrepreneur“ used here is equivalent to the notion of „professional“ used in Article 6 Rome I Regulation.

(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 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ EC No. L 144 of 4.6.1997, p. 19)
3. Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ EC No. L 171 of 7.7.1999, p. 12)
4. 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)
5. 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 country 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 entrepreneur 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

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.

Art. 46d

Choice of applicable law

(1) An agreement on choice of law according to article 5 of the Regulation (EU) No. 1259/2010 must be notarially certified.

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

Third Chapter 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) Subarticle 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 Subarticles 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

(1) 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 subarticles 1 and 3 shall apply mutatis mutandis.