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Translations of the other Books to be published shortly.

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Book 1 (Commercial Entities), Book 2 (Commercial Partnerships and Silent Partnership) and Book 5 (Maritime Trade) of the Commercial Code

Commercial Code in the revised version published in the Bundesgesetzblatt (BGBl., Federal Law Gazette), Part III, Section 4100-1, Book 1, as amended by Article 11 of the Act of 18 July 2017 (Federal Law Gazette Part I p. 2745), Book 2, as amended by Article 3 of the Act of 22 December 2015 (Federal Law Gazette Part I p. 2567), and Book 5, as amended by Article 5 of the Act dated 5 July 2016 (Federal Law Gazette Part I p. 1578)

Book One Commercial Entities

Part One Merchants

Section 1

(1) A merchant within the meaning of this Code is a person who carries on a commercial business.

(2) A commercial business is any commercial enterprise unless, by reason of its nature or size, the enterprise does not require a commercially organised business operation.

Section 2

A commercial entity whose commercial enterprise is not deemed to be a commercial business pursuant to Section 1 subsection (2) shall be deemed to be a commercial business within the meaning of this Code if the business name of the enterprise is registered in the Commercial Register. The entrepreneur is entitled, but not obliged, to effect registration pursuant to the provisions in force for the registration of commercial business names. If such

registration has been effected, the business name can also be deleted upon application of the entrepreneur, unless the requirement laid down in Section 1 subsection (2) has been fulfilled in the meantime.

Section 3

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

Section 4 (deleted)

Section 5

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

Section 6

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

Section 7

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

Part Two Commercial Register; Business Register

Section 8 Commercial Register

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

Section 8a

Entries in the Commercial Register; Authorisation to Issue Ordinances

- (1) An entry in the Commercial Register shall be effective as soon as it is stored in the data memory assigned to the Commercial Register entries and can continually be reproduced in legible form with no change in content.
- (2) The *Land* governments shall be authorised to establish, by statutory instrument, more specific provisions concerning electronic administration of the Commercial Register, electronic applications for registration, electronic submission of documents and their storage, unless relevant provisions are adopted by the Federal Ministry of Justice and Consumer Protection pursuant to section 387 subsection (2) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction. In adopting such provisions, they can also regulate details of data transmission as well as determine the form of electronic documents to be transmitted, in order to ensure suitability for handling by the court. The

Land governments can, by statutory instrument, transfer such authority to the *Land* departments of justice.

Section 8b Business Register

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

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

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

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

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

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

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

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

Section 9

Access to the Commercial Register and the Business Register

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

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

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

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

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

(6) Subsection (1), first sentence, shall apply *mutatis mutandis* to inspection of the Business Register. Requests pursuant to subsections (2) to (5) can also be communicated to the court

via the Business Register. An inspection of the balance sheet of a micro share capital company (Section 267a) that has exercised the right pursuant to Section 326 subsection (2) shall be effected only upon request by transmission of a copy.

Section 9a

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

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

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

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

Section 9b

European System of Interconnection of Registers; Authorisation to Issue Ordinances

(1) The entries in the Commercial Register and the documents submitted to the Commercial Register as well as accounting documents pursuant to Section 325 shall, insofar as they concern share capital companies or branch offices of share capital companies that are subject to the law of another member state of the European Union or of another contracting party to the European Economic Area Agreement, also be accessible through the European Justice Portal. To this end, the *Land* departments of justice shall transmit data of the Commercial Register and the operator of the Business Register shall transmit data of accounting documents respectively to the central European platform pursuant to Article 4a

paragraph (1) of Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11), as last amended by Directive 2013/24/EU (OJ L 158, 10.6.2013, p. 365), insofar as such transmission is required to create access to the original data via the search service on the website of the European Justice Portal.

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

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

(3) The *Land* departments of justice shall designate the electronic information and communication system through which the data from the Commercial Register are to be made accessible (subsection (1)) and transmitted and received in the exchange of information between the registers (subsection (2)), and they shall be responsible for operating the transfer of data pursuant to subsections (1) and (2), without prejudice to the responsibility of the operator of the Business Register pursuant to subsection (1) second sentence. Section 9 subsection (1), third to fifth sentences, shall apply *mutatis mutandis*.

(4) The Federal Ministry of Justice and Consumer Protection shall be authorised to establish, by statutory instrument and with the approval of the Federal Council [Bundesrat], the necessary provisions concerning

1. the structure, allocation and use of the unique European identifier,
2. the scope of the obligation to notify in the exchange of information between the registers, and the list of data to be transmitted in this regard,
3. the details regulating the electronic transfer of data pursuant to subsections (1) and (2), including specifications regarding data formats and payment modalities, and
4. the date of the first data transmission.

Section 10 Publication of the Entries

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

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

(1) The right of access pursuant to Article 15 paragraph (1) and the right to obtain a copy pursuant to Article 15 paragraph (3) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119 of 4 May 2016, p. 1; L 314 of 22 November 2016, p. 72) shall be afforded by ensuring that the data subject can access the Commercial Register and the documents submitted thereto, as well as the electronic information and communication system designated to publish the entries. The data subject shall not be informed of the specific recipients to whom personal data contained in the Register, in publications of the entries or in documents to be submitted to the Register, are disclosed.

(2) With regard to the personal data contained in the Commercial Register, in publications of the entries or in documents to be submitted to the Commercial Register, the right to rectification pursuant to Article 16 of Regulation (EU) 2016/679 can be exercised only in accordance with the requirements for deletion or rectification set out in sections 393 to 395 and sections 397 to 399 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction and in the statutory instrument pursuant to section 387 subsection (2) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction.

(3) The right to object pursuant to Article 21 of Regulation (EU) 2016/679 shall not apply as regards the personal data contained in the Commercial Register, in publications of the entries or in documents to be submitted to the Commercial Register.

Section 11

Disclosure in an Official Language of a Member State of the European Union

(1) The documents to be submitted to the Commercial Register, as well as the content of an entry, can additionally be transmitted in any official language of a member state of the European Union. The translations shall be referred to appropriately. Section 9 shall apply *mutatis mutandis*.

(2) In the event of the original version differing from a submitted translation, the latter cannot be cited against a third party; however such third party can invoke the submitted translation, unless the registered entity proves that the third party was aware of the original version.

Section 12

Applications for Registration, and Submissions

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

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

Section 13

Branch Offices of Enterprises with a Seat in Germany

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

facts as are required to be entered concerning the branch office shall be applied for in the same manner.

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

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

Sections 13a to 13c (deleted)

Section 13d

Seat or Main Office Abroad

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

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

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

Section 13e

Branch Offices of Share Capital Companies with a Seat Abroad

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

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

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

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

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

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

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

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

Section 13f

Branch Offices of Stock Corporations with a Seat Abroad

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

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

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

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

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

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

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

Section 13g

Branch Offices of Limited Liability Companies with a Seat Abroad

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

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

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

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

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

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

Section 13h

Transfer of Seat of a Domestic Main Office

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

(2) Where the main office or the seat is transferred outside of the district of the court of the previous main office or of the previous seat, this court shall, of its own motion and without undue delay, notify such transfer to the court of the new main office or of the new seat. Such notification shall be accompanied by the entries for the previous main office or previous seat, as well as by the records and documents kept with the court having previous jurisdiction. The court of the new main office or of the new seat shall examine whether the main office or the seat has been transferred properly and whether Section 30 has been complied with. If this is the case, the court shall register the transfer and adopt the entries of which it has been notified into its Commercial Register without further investigation. The registration shall be notified to the court of the previous main office or of the previous seat. This court shall make the necessary entries *proprio motu*.

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

Section 14

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

Section 15

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

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

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

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

Section 15a **Service by Publication**

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

Section 16

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

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

Part Three **Commercial Business Name**

Section 17

(1) The business name of a merchant is the name under which he carries on his business and signs his signature.

(2) A merchant can sue and be sued under his business name.

Section 18

(1) The business name shall be suited to designate the merchant and shall have a distinctive character.

(2) The business name shall not contain any information which is apt to be misleading with respect to business circumstances that are of material relevance for the market groups

concerned. In proceedings before the court of registration, the aptness to mislead shall be taken into consideration only if it is apparent.

Section 19

(1) Even if the business name is continued pursuant to Sections 21, 22, 24 or other statutory provisions, it shall include:

1. in the case of sole traders, the designation “*eingetragener Kaufmann*” [registered merchant], “*eingetragene Kauffrau*” [registered female merchant], or a generally comprehensible abbreviation of this designation, in particular “e.K.,” “e.Kfm.” or “e.Kfr.”;
2. in the case of a general partnership, the designation “*offene Handelsgesellschaft*” [general partnership] or a generally comprehensible abbreviation of this designation;
3. in the case of a partly limited partnership, the designation “*Kommanditgesellschaft*” [partly limited partnership] or a generally comprehensible abbreviation of this designation.

(2) If in the case of a general partnership or a partly limited partnership no natural person is personally liable, the business name shall, even if it is continued pursuant to Sections 21, 22, 24 or other statutory provisions, contain a designation indicating the limitation of liability.

Section 20 (deleted)

Section 21

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

Section 22

(1) Whoever acquires an existing commercial business *inter vivos* or *mortis causa* may, with or without appending an addition indicating successorship, carry on the business under the existing business name even if it includes the name of the former business owner, provided that the former business owner or his heirs expressly consent to the continuation of the business name.

(2) Where a commercial business is taken over on the basis of a usufructuary right, a leasehold agreement, or a similar relationship, these provisions shall apply *mutatis mutandis*.

Section 23

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

Section 24

(1) Where a person is admitted as a partner into an existing commercial business, or a shareholder or partner either joins or leaves a commercial company or partnership, the existing business name may, notwithstanding such change, continue to be used, even if it includes the name of the former business owner or names of shareholders or partners.

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

Section 25

(1) Whoever carries on a commercial business acquired *inter vivos* under the previous business name, with or without an addition indicating successorship, shall be liable for all obligations of the former owner incurred in the operation of the business. Where the former

owner or his heirs have consented to continuation of the business name, claims arising out of the operation of the business shall, with respect to debtors, be deemed to have devolved to the transferee.

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

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

Section 26

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

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

Section 27

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

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

Section 28

(1) Where a person joins the business of a sole trader as a general partner or as a limited partner, the partnership shall be liable for all obligations of the former business owner incurred in the operation of the business, even if the partnership does not continue the previous business name. With respect to debtors, claims arising out of the operation of the business shall be deemed to have devolved to the partnership.

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

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

management of the partnership or of an enterprise belonging to it as partner. His liability as limited partner shall remain unaffected.

Section 29

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

Section 30

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

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

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

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

Section 31

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

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

Section 32

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

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

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

Section 33

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

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

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

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

Section 34

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

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

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

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

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

Section 35 (deleted)

Section 36 (deleted)

Section 37

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

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

Section 37a

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

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

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

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

**Part Four
Books of Account**

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

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

Section 48

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

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

Section 49

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

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

Section 50

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

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

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

Section 51

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

Section 52

(1) The general commercial power of representation is revocable at any time irrespective of the legal relationship underlying the conferment thereof, without prejudice to the right to contractual remuneration.

(2) The general commercial power of representation is not transferable.

(3) The general commercial power of representation shall not terminate upon the death of the owner of the commercial business.

Section 53

(1) The owner of the commercial business shall apply for registration of conferment of a general commercial power of representation in the Commercial Register. Where the general

commercial power of representation has been conferred as a joint general commercial power of representation, this must also be submitted for entry.

(2) Termination of the general commercial power of representation shall be submitted for entry in the same manner as conferment thereof.

Section 54

(1) Where a person is authorised, without conferment of a general commercial power of representation, to operate a commercial business, to undertake a particular kind of transaction relating to a commercial business or to undertake individual transactions relating to a commercial business, such power of attorney (commercial authority to act) shall extend to all transactions and legal acts which are normally involved in the operation of such a commercial business or in the undertaking of such transactions.

(2) The holder of a commercial authority to act shall have authority to dispose of or encumber real property, to enter into bill of exchange commitments, to take out loans and to conduct litigation only if such authority has been specifically conferred on him.

(3) A third party must allow other limitations on the commercial authority to act to be asserted against him only if he knew or ought to have known of such limitations.

Section 55

(1) The provisions of Section 54 shall also apply to holders of a commercial authority to act who are commercial agents or who in their capacity as commercial employees are entrusted with concluding transactions in the principal's name outside of the principal's business premises.

(2) The authority conferred on such persons to conclude transactions shall not empower them to amend concluded agreements, especially as regards extending periods for payment.

(3) Such persons shall be authorised to accept payments only if they have been specifically granted such authority.

(4) Such persons shall be deemed to have authority to accept notice of defective goods, to accept declarations that goods will be made available and to accept similar declarations by which a third party asserts or reserves his rights arising from defective performance; they can assert rights of the entrepreneur (principal) to preserve evidence.

Section 56

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

Section 57

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

Section 58

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

Part Six

Commercial Employees and Commercial Apprentices

Section 59

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

Section 60

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

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

Section 61

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

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

Section 62

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

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

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

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

Section 63 (deleted)

Section 64

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

Section 65

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

Sections 66 to 72 (deleted)

Section 73 (deleted)

Section 74

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

Section 74a

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

Section 74b

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

Section 74c

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

Section 75

- (1) Where the employee terminates the employment relationship pursuant to the provisions of *Sections 70 and 71* by reason of breach of contract by the principal, the non-competition clause shall be invalid if the employee declares in writing, within one month of giving notice of termination, that he does not consider himself bound by the agreement.
- (2) If the principal terminates the employment relationship, the non-competition clause shall be invalid in the same way, unless a serious reason relating to the person of the employee exists for such termination or the principal declares, upon giving notice of termination, that

during the period of restriction he will pay to the employee the full contractual remuneration last received by him. In the latter case, the provisions of Section 74b shall apply *mutatis mutandis*.

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

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

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

Section 75a

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

Section 75b (deleted)

Section 75c

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

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

Section 75d

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

Section 75e (deleted)

Section 75f

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

Section 75g

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

Section 75h

(1) Where a commercial employee who is entrusted only with negotiating transactions outside of the principal's business premises has concluded a transaction in the principal's name, and the third party did not know of the lack of power of agency, the transaction shall

be deemed to be ratified by the principal if, after having been informed by the commercial employee, or by the third party, of the conclusion of such transaction and the material terms thereof, he fails to repudiate it without undue delay vis-à-vis the third party.

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

Sections 76 to 82 (deleted)

Section 82a

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

Section 83

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

Part Seven Commercial Agents

Section 84

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

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

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

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

Section 85

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

Section 86

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

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

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

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

Section 86a

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

(2) The principal shall furnish the commercial agent with all necessary information. He shall inform him, without undue delay, of his acceptance or refusal of a transaction negotiated by the commercial agent or a transaction concluded by the agent without power of agency, and of any non-execution of a transaction negotiated or concluded by the agent. He shall inform

him, without undue delay, if it is probable that he is only able or willing to conclude transactions in a significantly lower volume than the commercial agent could expect under ordinary circumstances.

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

Section 86b

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

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

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

Section 87

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

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

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

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

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

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

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

Section 87a

(1) The commercial agent shall be entitled to commission as soon as, and to the extent that, the principal has executed the transaction. A divergent agreement can be made, but the commercial agent shall, upon execution of the transaction by the principal, be entitled to a reasonable advance which shall be due not later than the last day of the following month. Irrespective of an agreement, however, the commercial agent shall be entitled to commission as soon as, and to the extent that, the third party has executed the transaction.

(2) If it is established that the third party will not perform, there shall be no right to commission; any amounts already received shall be returned.

(3) The commercial agent shall also be entitled to commission if it is established that the principal fails to execute the transaction at all or executes the transaction only partially, or in a manner divergent from the initial agreement. No right to commission shall exist in the event

of failure to execute if, and to the extent that, such failure is due to a reason for which the principal is not to blame.

(4) The claim to commission shall become payable on the last day of the month in which such claim is to be calculated pursuant to Section 87c subsection (1).

(5) Any agreements deviating from subsection (2) first part of the sentence, or from subsections (3) and (4), to the detriment of the commercial agent, shall be ineffective.

Section 87b

(1) Where the amount of commission is not specified, the customary rate shall be deemed to be agreed upon.

(2) Commission shall be calculated on the basis of the remuneration payable by the third party or the principal. Discounts for cash payment shall not be deducted; the same shall apply to incidental costs, such as freight charges, packaging charges, customs duties, and taxes, unless the incidental costs are charged separately to the third party. Value-added tax itemised separately on invoices solely by reason of tax law provisions shall be deemed not to be charged separately.

(3) In the case of fixed-term contracts on permitting use of property by third parties, the commission shall be calculated on the basis of the remuneration payable for the duration of the contract. In the case of contracts of indefinite duration, commission shall be calculated on the basis of the remuneration payable until the earliest date when the third party can terminate the contract; if the contract continues, the commercial agent shall be entitled to additional commission calculated accordingly.

Section 87c

(1) The commission due the commercial agent shall be calculated by the principal on a monthly basis; this period can be extended to a maximum of three months. The calculation shall be effected without undue delay, at the latest by the end of the following month.

(2) Upon calculation of the commission due, the commercial agent can demand an extract from the books concerning all transactions on which he is entitled to commission under Section 87.

(3) The commercial agent can also demand information regarding all matters that are material to the entitlement to commission, its due date and the calculation thereof.

(4) If the extract from the books is withheld, or reasonable doubt exists as to the correctness or completeness of the calculation or of the extract from the books, the commercial agent can demand that, at the principal's option, either he or an auditor or sworn certified accountant to be designated by him be permitted to inspect the business records or other documents to the extent necessary to determine the correctness or completeness of the calculation or of the extract from the books.

(5) These rights of the commercial agent cannot be excluded or limited.

Section 87d

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

Section 88 (deleted)

Section 88a

(1) The commercial agent cannot waive his statutory rights of retention in advance.

(2) After termination of the agency contract, the commercial agent shall have a right, under general provisions, to retain the documentation provided to him (Section 86a subsection (1)) only by reason of payable commissions and reimbursement of expenses.

Section 89

(1) Where the agency contract is entered into for an indefinite period, it can be terminated during the first year of the contract by giving one month's notice of termination, during the

second year of the contract by giving two months' notice of termination and during the third to the fifth year of the contract by giving three months' notice of termination. After a contract period of five years, the agency contract can be terminated by giving six months' notice of termination. Notice of termination is only permitted with effect to the end of a calendar month, unless otherwise agreed by the parties.

(2) The periods of notice under subsection (1), first and second sentences, can be extended by agreement; the period of notice to be observed by the principal may not be shorter than that to be observed by the commercial agent. If a shorter period of notice for the principal is agreed upon, the period of notice for the commercial agent shall apply.

(3) An agency contract entered into for a fixed period which continues to be performed by both parties after such agreed period has expired shall be deemed to be extended for an indefinite period. As regards the determination of the periods of notice under subsection (1), first and second sentences, the total duration of the agency contract shall be determinative.

Section 89a

(1) Both parties can terminate the agency contract for a compelling reason without observing a notice period. Such right cannot be excluded or limited.

(2) Where termination is caused by conduct for which the other party is to blame, such party shall be obliged to pay compensation for damage arising from the termination of the agency contract.

Section 89b

(1) The commercial agent shall be entitled to demand a reasonable indemnity from the principal, after termination of the agency contract, if and to the extent that

1. the principal continues to derive substantial benefits, even after termination of the agency contract, from business relations with new customers brought by the commercial agent, and

2. the payment of an indemnity is equitable having regard to all the circumstances and, in particular, the commission lost by the commercial agent on the business transacted with such customers.

If the commercial agent has so significantly increased the volume of business with a customer that it is economically equivalent to the acquisition of a new customer, it shall be deemed equal to the acquisition of a new customer.

(2) The indemnity shall amount to not more than one year's commission or other annual remuneration calculated on the basis of the commercial agent's average earnings for his activities over the preceding five years; if the agency contract goes back less than five years, the average for the period of activity shall be determinative.

(3) The claim to indemnity shall not arise if

1. the commercial agent has terminated the agency contract, unless the conduct of the principal gave justified grounds for doing so, or the commercial agent cannot reasonably be expected to continue his activities on account of his age or of illness, or

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

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

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

(5) Subsections (1), (3) and (4) shall apply to insurance agents, subject to the proviso that procurement of new insurance contracts by the insurance agent shall be substituted for

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

Section 90

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

Section 90a

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

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

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

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

Section 91

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

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

Section 91a

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

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

Section 92

- (1) An insurance agent is a person who, as a commercial agent, is entrusted with the negotiation or conclusion of insurance contracts.
- (2) The agency contract between the insurance agent and the insurer shall be governed by the provisions applicable to the agency contract between the commercial agent and the principal, subject to subsections (3) and (4).
- (3) In deviation from Section 87 subsection (1), first sentence, an insurance agent shall be entitled to commission only for transactions which are attributable to his efforts. Section 87 subsection (2) shall not apply to insurance agents.
- (4) The insurance agent shall be entitled to commission (Section 87a subsection (1)) as soon as the insured party has paid the premium on the basis of which the commission is calculated pursuant to the agency contract.
- (5) The provisions of subsections (1) to (4) shall apply *mutatis mutandis* to agents of *Bausparkassen* [building and loan societies].

Section 92a

- (1) With regard to the agency contract of a commercial agent who is contractually not permitted to work for other principals, or for whom this is impossible due to the nature and scope of the activities demanded of him, the Federal Ministry of Justice and Consumer Protection can, in agreement with the Federal Ministry of Economic Affairs and Energy, after consultation with associations of commercial agents and of principals, prescribe by statutory instrument, which does not require the approval of the Federal Council [Bundesrat], the minimum level of contractual duties of the principal in order to ensure that the requisite social and economic needs of such commercial agents or of a particular group among such commercial agents are met. Such prescribed duties cannot be excluded or limited by contract.
- (2) Subsection (1) shall also apply to the agency contract of an insurance agent who, by virtue of one or more contracts, is entrusted with negotiating or concluding transactions for several insurers belonging to an insurance group or to an organisational structure between insurers, to the extent that termination of the agency contract with one of these insurers would likely result in termination of the agency contracts with the other insurers. In such case, it can also be determined by statutory instrument, which does not require the approval of the Federal Council [Bundesrat], whether the duties prescribed are owed by all insurers jointly and severally, or pro rata, or by only one of the insurers, and how the duty to adjust advancements should be shared among them.

Section 92b

- (1) Sections 89 and 89b shall not apply to sideline commercial agents. Where the agency contract is entered into for an indefinite period, it can be terminated by giving one month's notice of termination to become effective at the end of a calendar month; if a different period of notice is agreed upon, it must be the same for both parties. The right to a reasonable advance pursuant to Section 87a subsection (1), second sentence, can be excluded.
- (2) Subsection (1) can be invoked only by a principal who has entrusted the commercial agent with the negotiation or conclusion of transactions expressly as a sideline commercial agent.
- (3) Whether a commercial agent is acting only as a sideline commercial agent shall be determined according to the generally accepted view in the trade.
- (4) The provisions of subsections (1) to (3) shall apply *mutatis mutandis* to insurance agents and to agents of *Bausparkassen* [building and loan societies].

Section 92c

- (1) If, according to the contract, the commercial agent is not to perform his activities for the principal within the territory of the European Community or of the other contracting states of the European Economic Area Agreement, other agreements can be made with regard to all provisions contained in this part.

(2) The same shall apply if the commercial agent is entrusted with the negotiation or conclusion of transactions concerning the freighting, dispatching or outfitting of ships, or the booking of passages on ships.

Part Eight Commercial Brokers

Section 93

(1) Whoever, on a commercial basis, undertakes on behalf of others the negotiation of contracts concerning the purchase or sale of goods or securities, or concerning insurance, carriage of goods, chartering of ships or other commercial matters, without having continuing authority to do so by virtue of a contractual relationship, shall have the rights and duties of a commercial broker.

(2) The provisions of this part shall not apply to the negotiation of transactions other than those specified above, particularly to the negotiation of transactions concerning immovable property, even if such negotiation is effected by a commercial broker.

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

Section 94

(1) The commercial broker shall, unless released therefrom by the parties or by local custom given the kind of goods involved, supply each party, without undue delay following the conclusion of the transaction, with a contract note signed by him, stating the parties, the subject-matter and terms of the transaction, and particularly in the case of sales of goods or securities the kind and quantity thereof, as well as the price and time of delivery.

(2) Where the transactions are not to be performed immediately, the contract note shall be forwarded to the parties for their signature and each party shall be sent the contract note signed by the other party.

(3) If one party refuses to accept or sign the contract note, the commercial broker shall notify the other party thereof without undue delay.

Section 95

(1) Where one party accepts a contract note in which the commercial broker has not disclosed the identity of the other party, that party shall be bound to the transaction with the other party, whose identity is to be disclosed to him subsequently, unless reasonable objections are raised against the other party.

(2) The identity of the other party shall be disclosed within a time period in accordance with local custom, or, in the absence thereof, within a time period appropriate in light of the circumstances.

(3) If the identity is not disclosed or reasonable objections are raised against the disclosed person or firm, the party shall be entitled to hold the commercial broker liable for performance of the transaction. Such claim shall be excluded if the party does not, on request of the commercial broker, declare without undue delay whether it demands performance.

Section 96

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

Section 97

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

Section 98

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

Section 99

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

Section 100

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

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

Section 101

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

Section 102

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

Section 103

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

1. intentionally or negligently fails to maintain a journal concerning the transactions concluded, or maintains the journal in a manner contrary to Section 100 subsection (1), or
2. destroys such a journal before expiry of the statutory retention period.

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

Section 104

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

Part Nine Provisions on Regulatory Offences

Section 104a

Provision on Regulatory Offences

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

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

Book Two Commercial Partnerships and Silent Partnership

**Part One
General Partnership**

**Title One
Formation of a Partnership**

Section 105

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

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

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

Section 106

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

(2) The application shall contain:

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

Section 107

If the business name of a partnership is changed, the seat of the partnership is transferred to another location, the domestic business address is changed, a new partner joins the partnership, or a partner's power of representation is changed, such facts shall also be submitted for entry in the Commercial Register.

Section 108

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

**Title Two
Legal Relations of Partners to One Another**

Section 109

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

Section 110

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

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

Section 111

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

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

Section 112

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

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

Section 113

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

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

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

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

Section 114

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

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

Section 115

(1) Where all or several partners have a right to manage the business, each of them shall have authority to act alone; if, however, another managing partner objects to the taking of an action, it shall not be taken.

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

Section 116

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

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

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

Section 117

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

Section 118

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

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

Section 119

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

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

Section 120

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

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

Section 121

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

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

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

Section 122

(1) Each partner shall be entitled to withdraw money from the partnership funds, at his own expense, up to an amount equal to four percent of his share of capital as determined for the last fiscal year and, insofar as it does not cause obvious harm to the partnership, also to demand payment of his profit share of the previous year in excess of the amount referred to above.

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

Title Three

Legal Relations of Partners to Third Parties

Section 123

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

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

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

Section 124

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

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

Section 125

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

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

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

(4) (repealed)

Section 125a

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

(2) Section 37a subsections (2) and (3) shall apply mutatis mutandis to pre-printed forms and order forms, and Section 37a subsection (4) shall apply mutatis mutandis to coercive fines against the partners authorised to represent the partnership, or their organ representatives and the liquidators.

Section 126

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

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

(3) Where such power of representation is limited to the operation of one of several establishments of the partnership, the provisions of Section 50 subsection (3) shall apply mutatis mutandis.

Section 127

The power of representation may, upon application by the other partners, be withdrawn from a partner by means of a judicial decision, if there is a compelling reason to do so; such a

reason shall include, in particular, gross breach of duty or inability to properly represent the business.

Section 128

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

Section 129

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

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

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

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

Section 129a (deleted)

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Section 130

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

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

Section 130a

(1) Where a partnership in which none of the partners is a natural person has become illiquid or overindebted, the organ representatives of the partners authorised to represent the partnership, and the liquidators, shall be prohibited from making any payments on behalf of the partnership. This shall not apply to payments which, after this point in time, are consistent with the due care of a prudent and conscientious manager. The same shall apply mutatis mutandis to payments to partners, if such payments led to the partnership becoming illiquid, unless this was not recognisable even when exercising the due care referred to in the second sentence. The first and third sentences shall not apply if one of the partners of the general partnership is another general partnership or partly limited partnership in which a general partner is a natural person.

(2) If, contrary to section 15a subsection (1) of the Insolvency Statute, the opening of insolvency proceedings is not applied for or not applied for in due time, or if payments are made contrary to subsection (1), the organ representatives of the partners authorised to represent the partnership, and the liquidators, shall be jointly and severally obliged to compensate the partnership for the resulting damage. Where it is disputed as to whether they exercised the due care of a prudent and conscientious manager, they shall bear the burden of proof. The obligation to pay compensation may neither be limited nor excluded by agreement with the partners. Insofar as payment of compensation is necessary to satisfy the partnership's creditors, the obligation to pay compensation shall be cancelled by neither a waiver or settlement by the partnership, nor by the fact that the action is based on a resolution of the partners. The fourth sentence shall not apply if the party obliged to pay compensation is illiquid and enters into a composition with its creditors in order to avert insolvency proceedings or if the compensation obligation is provided for in an insolvency plan. Claims arising from these provisions shall become statute-barred in five years.

(3) These provisions shall apply mutatis mutandis if the organ representatives referred to in subsections (1) and (2) are, in turn, companies in which none of the partners or shareholders is a natural person or the chain of companies continues in this way.

**Section 130b
(deleted)**

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**Title Four
Dissolution of the Partnership and Withdrawal of Partners**

Section 131

(1) The general partnership shall be dissolved:

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

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

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

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

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

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

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

Section 132

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

Section 133

(1) Upon application by one of the partners, the dissolution of the partnership can be declared by judicial decision prior to the expiry of its fixed term or, if the partnership is entered into for an indefinite period, without notice if there is a compelling reason therefor.

(2) Such a reason shall be deemed to exist particularly if another partner intentionally or with gross negligence violates a material obligation incumbent upon him under the partnership agreement, or if the performance of such an obligation becomes impossible.

(3) An agreement by which a partner's right to demand dissolution of the partnership is excluded or limited contrary to these provisions shall be ineffective.

Section 134

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

Section 135

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

Sections 136 to 138 (deleted)

Section 139

(1) If the partnership agreement provides that, in the event of a partner's death, the partnership shall be continued with his heirs, each heir can make his remaining in the partnership contingent upon him being granted the status of a limited partner and retaining the previous profit share, and upon the deceased's share of contribution devolved on him being recognised as his contribution as a limited partner.

(2) If the other partners refuse a request to this effect by the heir, he may declare his withdrawal from the partnership, without having to comply with a period of notice.

(3) The rights referred to above may be asserted by the heir only within a period of three months from the date on which he gained knowledge of the devolution of the inheritance. The provisions applicable to limitation in section 210 of the Civil Code shall apply mutatis mutandis to the running of the time period. Where the right to disclaim the inheritance has not been forfeited at the end of the three months, the time limit shall not end prior to the expiry of the period for disclaimer.

(4) If the heir withdraws from the partnership within the period specified in subsection (3), or the partnership is dissolved during such period, or the heir is granted the status of a limited partner, he shall be liable for the partnership debts incurred prior thereto only pursuant to the civil law provisions concerning the liability of heirs for obligations of the estate.

(5) The partnership agreement cannot exclude application of the provisions of subsections (1) to (4); however, in the event that the heir has made his remaining in the partnership contingent upon being granted the status of a limited partner, his profit share can be determined differently from that of the deceased.

Section 140

(1) If a circumstance relating to the person of a partner arises which, pursuant to Section 133, entitles the other partners to demand dissolution of the partnership, the court may order the expulsion of such partner from the partnership in lieu of dissolution, provided that the other partners have filed a motion to this effect. A court action to expel a partner shall not be precluded by the fact that only one partner will remain after the expulsion.

(2) The partnership's assets position at the time the action for expulsion was filed shall be determinative for the apportionment of assets and liabilities between the partnership and the expelled partner.

**Sections 141 and 142
(deleted)**

Section 143

(1) Dissolution of the partnership shall be submitted for entry in the Commercial Register by all of the partners. This shall not apply if insolvency proceedings are opened in respect of the assets of the partnership or the opening of such proceedings is refused (Section 131 subsection (1), number 3, and subsection (2) number 1). In such cases, the court shall enter the dissolution and the reason therefor proprio motu. If the partnership has been deleted (Section 131 subsection (2), number 2), registration of dissolution shall not be necessary.

(2) Subsection (1), first sentence, shall apply mutatis mutandis to the withdrawal of a partner from the partnership.

(3) Where it is to be assumed that the death of a partner has resulted in dissolution or withdrawal, registration can also be effected without participation of the heirs in the filing of the application for registration, insofar as particular obstacles impede such participation.

Section 144

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

(2) The continuation shall be submitted for entry in the Commercial Register by all of the partners.

**Title Five
Liquidation of the Partnership**

Section 145

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

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

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

Section 146

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

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

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

Section 147

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

Section 148

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

(2) Registration of court-appointed liquidators as well as registration of a liquidator's removal by the court shall be effected proprio motu.

(3) (deleted)

Section 149

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

Section 150

(1) Where there are several liquidators, they may only act jointly in matters pertaining to the liquidation, unless it is provided that they may act individually.

(2) The provision of subsection (1) shall not preclude the liquidators from authorising one or more of their number to undertake particular transactions or particular kinds of transactions. If a declaration of intent is to be made to the partnership, the provision of Section 125 subsection (2), third sentence, shall apply mutatis mutandis.

Section 151

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

Section 152

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

Section 153

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

Section 154

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

Section 155

(1) Partnership assets remaining after payment of debts shall be distributed by the liquidators among the partners in proportion to their respective shares of capital as indicated by the closing balance sheet.

(2) Money not required during the liquidation process shall be distributed provisionally. Amounts required to cover not yet due, or disputed obligations, and to secure the respective amounts payable to the partners upon the final distribution, shall be retained. The provisions of Section 122 subsection (1) shall not apply during the liquidation period.

(3) If a dispute arises among the partners regarding the distribution of partnership assets, the liquidators shall suspend the distribution until such dispute has been resolved.

Section 156

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

Section 157

(1) After the liquidation has been completed, the liquidators shall apply for the cessation of the business name to be registered in the Commercial Register.

(2) The books and documents of the dissolved partnership shall be deposited for safekeeping with one of the partners or a third party. In the absence of an agreement, the respective partner or third party shall be designated by the court in whose district the partnership has its seat.

(3) The partners and their heirs shall retain the right to inspect and use the books and documents.

Section 158

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

Title Six

Statute of Limitations. Time Limit on Liability.

Section 159

(1) Claims against a partner arising from obligations of the partnership shall become statute-barred five years after dissolution of the partnership, unless the claim against the partnership is subject to a shorter period of limitation.

(2) The period of limitation shall begin to run at the end of the day on which dissolution of the partnership is registered in the Commercial Register of the court having jurisdiction over the seat of the partnership.

(3) If the creditor's claim against the partnership becomes due after the entry, the period of limitation shall begin to run from the due date.

(4) In respect of the dissolved partnership, recommencement of the limitation period and suspension thereof under section 204 of the Civil Code shall also be effective vis-à-vis partners who were members of the partnership at the time of its dissolution.

Section 160

(1) If a partner withdraws from the partnership, he shall be liable for its obligations incurred up to that point if they become due before the end of five years after his withdrawal and claims against him resulting therefrom have been determined in a manner specified in section 197 subsection (1), numbers 3 to 5, of the Civil Code, or if a judicial or official act of execution is undertaken or applied for; in the case of public law obligations, the issuance of an administrative act shall suffice. The time period shall begin to run at the end of the day on which the withdrawal is registered in the Commercial Register of the court having jurisdiction over the seat of the partnership. The provisions of sections 204, 206, 210, 211 and 212 subsections (2) and (3) of the Civil Code applying to limitation shall apply mutatis mutandis.

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

(3) If a partner becomes a limited partner, subsections (1) and (2) shall apply mutatis mutandis to the limitation of his liability for the obligations already existing at the time of the entry of the change in the Commercial Register. This shall even apply if he becomes active in the management of the partnership or of an enterprise belonging to it as partner. His liability as limited partner shall remain unaffected.

Part Two Partly Limited Partnership

Section 161

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

(2) Unless this Part provides otherwise, the provisions applicable to the general partnership shall apply to the partly limited partnership.

Section 162

(1) The application for registration of the partnership shall, in addition to the particulars specified in Section 106 subsection (2), contain the names of the limited partners and each limited partner's respective amount of contribution for which he is liable towards third parties. If a civil-law partnership is a limited partner, its partners and subsequent changes in the composition of its partners shall also be submitted for entry in accordance with Section 106 subsection (2).

(2) Information to be disclosed in the publication of the registration of the partnership shall not include information on the limited partners; the provisions of Section 15 shall not apply in this regard.

(3) These provisions shall apply mutatis mutandis in the event of a limited partner joining an existing commercial partnership and in the event of withdrawal of a limited partner from a partly limited partnership.

Section 163

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

Section 164

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

Section 165

Sections 112 and 113 shall not apply to limited partners.

Section 166

(1) The limited partner shall be entitled to demand a copy of the annual financial statement and to examine its accuracy by inspection of the books and documents.

(2) The limited partner shall not have the additional rights granted by Section 118 to partners excluded from management of the business.

(3) Upon application of a limited partner, the court may at any time, for compelling reasons, order that a balance sheet and an annual financial statement or other information be furnished and that books and documents be provided.

Section 167

(1) The provisions of Section 120 concerning the calculation of profits and losses shall also apply to limited partners.

(2) However, the profits due a limited partner shall be added to his share of capital only as long as such share has not reached the amount of the stipulated contribution.

(3) The limited partner shall participate in losses only up to the amount of his share of capital and his contribution still outstanding.

Section 168

(1) The partners' profit shares shall be determined pursuant to the provisions of Section 121 subsections (1) and (2), insofar as the profits do not exceed four percent of the shares of capital.

(2) With regard to profits in excess of this amount, and to losses, such distribution as is reasonable under the circumstances shall be deemed to have been stipulated, unless agreed otherwise.

Section 169

(1) Section 122 shall not apply to limited partners. A limited partner shall be entitled only to payment of profits due him; he cannot demand payment of profits as long as his share of capital has been reduced by losses to less than the amount paid in as the stipulated contribution or would be reduced to less than this amount as a result of such payment.

(2) The limited partner shall not, by reason of subsequent losses, be obliged to repay profits received.

Section 170

The limited partner has no authority to represent the partnership.

Section 171

(1) The limited partner shall be directly liable to the creditors of the partnership up to the amount of contribution for which he is liable towards third parties; such liability shall be excluded to the extent that the contribution has been made.

(2) Where insolvency proceedings have been opened in respect of the assets of the partnership, the rights of the partnership's creditors pursuant to subsection (1) shall be exercised by the insolvency administrator or the insolvency monitor during the course of the proceedings.

Section 172

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

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

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

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

(5) A limited partner shall in no case be obliged to repay whatever he has received in good faith as profit on the basis of a balance sheet drawn up in good faith.

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

Section 172a (deleted)

Section 173

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

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

Section 174

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

Section 175

An increase or reduction in an amount of contribution for which a limited partner is liable towards third parties must be submitted for entry in the Commercial Register by all of the partners. Section 162 subsection (2) shall apply mutatis mutandis. The provisions of Section 14 shall not apply to registration in the Commercial Register of the partnership's seat.

Section 176

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

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

Section 177

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

Section 177a

Sections 125a and 130a shall also apply to a partnership in which a limited partner is a natural person, subject to the proviso that, with respect to Section 130a, Section 172 subsection (6), second sentence, shall apply instead of subsection (1) fourth sentence. The particulars concerning the partners prescribed under Section 125a subsection (1), second sentence, shall be required only for the general partners of the partnership.

Sections 178 to 229

(deleted)

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Part Three Silent Partnership

Section 230

(1) Whoever participates as a silent partner by means of a contribution of assets in a commercial business carried on by another person shall make the contribution such that it is transferred to the assets of the owner of the commercial business.

(2) Solely the owner shall have rights and obligations arising from transactions concluded in the operation of the business.

Section 231

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

Section 232

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

Section 233

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

Section 234

- (1) The provisions of Sections 132, 134 and 135 shall apply mutatis mutandis to the termination of the partnership by one of the partners or by a creditor of the silent partner. The provisions of section 723 of the Civil Code concerning the right to terminate the partnership for a compelling reason without observing a period of notice shall remain unaffected.
- (2) The partnership shall not be dissolved by the death of the silent partner.

Section 235

- (1) After dissolution of the partnership, the owner of the commercial business shall calculate what is owed the silent partner and pay him the respective credit balance in money.
- (2) Transactions pending at the time of dissolution shall be wound up by the owner of the commercial business. The silent partner shall participate in the profits and losses resulting from such transactions.
- (3) He can, at the end of each fiscal year, demand an account of transactions completed in the meanwhile, payment of the amount due him and information on the status of still pending transactions.

Section 236

- (1) If insolvency proceedings are opened in respect of the assets of the owner of the commercial business, the silent partner may, on account of his contribution, assert his claim as an insolvency creditor, to the extent that the amount of the contribution exceeds the amount of his share of the losses.
- (2) If the contribution is still outstanding, the silent partner shall pay it into the insolvency estate, up to the amount necessary to cover his share of the losses.

Section 237 (deleted)

Fifth Book Maritime trade

Chapter 1 Persons involved in shipping

Section 476

Reeder

Reeder means the owner of a ship who operates it in order to pursue marine navigation as a gainful economic activity.

Section 477

Ausrüster

- (1) *Ausrüster* means the person operating a ship owned by another person in order to pursue marine navigation as a gainful economic activity.
- (2) In its relationship to third parties, the *Ausrüster* is deemed to be the *Reeder*.
- (3) Where a third party asserts a claim against a person owning a ship in the latter's capacity as *Reeder*, the person owning the ship may only use the defence that it is the *Ausrüster*, and not the person owning the ship, who is operating the ship to pursue marine navigation as a gainful economic activity, provided the person owning the ship informs the third party of the name and address of the *Ausrüster* immediately after the claim is asserted.

Section 478

Ship's company

The ship's company consists of the master, the officers, the crew as well as all other persons involved in the operation of the ship who have been hired by the *Reeder* or by the *Ausrüster*, or who have been put at the disposal of the *Reeder* or *Ausrüster* by a third party for the purpose of performing work in the context of the ship's operation, and who are subject to the orders of the master.

Section 479

Rights of the master; ship's log

- (1) The master is authorised to pursue all business and enter into all legal transactions on behalf of the *Reeder* such as are usually entailed by the operation of the ship. This authorisation also extends to the conclusion of contracts of carriage and to the issuance of bills of lading. A third party must accept as binding on it any restrictions on this authorisation only if it knew or ought to have known of such restrictions.
- (2) Where a logbook is to be kept for the ship, the master must record all accidents occurring during the voyage and that concern the ship, the cargo it is carrying, or any persons, or that may otherwise result in any pecuniary prejudice. The description of each accident must also identify the means used to avert such prejudice or to mitigate it. The parties affected by the accident may demand a copy of the entries made in the logbook regarding the accident, and may also demand that such copy be certified.

Section 480

Responsibility of the Reeder for the ship's company and pilots

Where a member of the ship's company or a pilot on board the ship, while carrying out his duty, incurs liability in relation to a third party for damages, the *Reeder* shall likewise be liable for said damages. However, the liability of the *Reeder* vis-à-vis a cargo interest for any damages resulting from the loss of or physical damage to the goods carried by the ship solely shall be such as if it had been the carrier; section 509 shall apply *mutatis mutandis*.

Chapter 2

Transport contracts

Subchapter 1

Contracts for the carriage of goods by sea

Title 1

Contract for the carriage of general cargo

Subtitle 1

General regulations

Section 481

Primary duties; scope of application

(1) By virtue of the contract for the carriage of general cargo, the carrier is obliged to carry the goods, by sea and by ship, to their destination and there to deliver them to the consignee.

(2) The shipper is obliged to pay the agreed freight.

(3) The provisions of the present Title shall apply whenever the carriage is part of the operations of a commercial enterprise. If the nature or size of the enterprise is such that it does not require a commercial business organisation, and if the business name of the enterprise has not been entered in the Commercial Register in accordance with section 2, then the provisions set out in Chapter 1 of Book 4 shall apply as a subsidiary source of law to the contract for the carriage of general cargo; however, this shall not apply to the provisions under sections 348 through 350.

Section 482

General information regarding the goods

(1) Prior to delivery of the goods to the carrier, the shipper shall provide to the carrier the information on the goods that is required for carriage of same. Specifically, the shipper shall furnish information in *text form* regarding the quantity, number, or weight of the goods, as well as the leading marks and the nature of the goods.

(2) Where a third party named by the shipper delivers the goods to the carrier for carriage, the carrier may demand that such third party provide it with the information set out in the second sentence of subsection (1).

Section 483

Dangerous goods

(1) Where dangerous goods are to be carried, the shipper and the third party referred to in section 482 (2) shall, in a timely manner and in *text form*, inform the carrier of the precise nature of the danger and, if necessary, of any precautionary measures to be taken.

(2) If the carrier, the master or the ship's agent neither knew of the nature of the danger when taking over the goods, nor at least had been informed of it, then the carrier may unload, store, or return dangerous goods or, to the extent necessary, destroy them or render them harmless without thereby becoming liable in damages to the shipper. If the carrier, the master or the ship's agent knew of the nature of the danger when the goods were received for carriage, or if they had at least been informed of it, then the carrier may only implement the measures set out in the first sentence hereof without becoming liable to the shipper if the dangerous goods were likely to become a danger to the ship or its cargo, and such danger was not due to the carrier's fault or neglect.

(3) The carrier may claim reimbursement from the shipper and the third party referred to in section 482 (2), should the latter have made incorrect or incomplete statements when handing over the goods for carriage, for any expenditures incurred by the carrier when taking the measures set out in the first sentence of subsection (2).

Section 484

Packing; leading marks

Insofar as the goods, given their nature and the type of carriage agreed, require packaging, the shipper shall package them such that they are protected against loss and physical damage and that the carrier suffers no detriment. Where the goods are to be delivered for carriage in or on a container, a pallet, or any other article of transport used to consolidate cargo units, the shipper must properly and carefully stow and secure the goods, also in or on the article of transport, in such a way that they will not cause harm to persons or property. Furthermore, the shipper shall mark the goods insofar as their contractually agreed handling so requires.

Section 485

Seaworthiness and cargoworthiness

The carrier must ensure that the ship is in seaworthy condition and properly furnished, equipped, manned, and sufficiently supplied (seaworthiness); the carrier must also ensure that the holds, including the refrigerating and cooling chambers, as well as all other parts of the ship within which or on which goods are loaded, are fit for the reception, carriage, and preservation of the goods (cargoworthiness).

Section 486

Handover of the goods for carriage; loading; reloading; discharge

(1) The shipper must effect the delivery of the goods to the carrier for carriage (handover) within the time contractually agreed therefor. The carrier must issue to the party handing over the goods for carriage a written confirmation of receipt upon the latter's demand. Such confirmation of receipt may also be issued as part of a bill of lading or of a sea waybill.

(2) Unless the circumstances or customary standards require otherwise, the carrier must load the goods on board the ship, stow them there and secure them (loading and stowing), and must also discharge the goods from the ship.

(3) Where the goods are stored in a container, the carrier is authorised to reload the container.

(4) Unless the shipper has granted its consent, the carrier may not load the goods on deck. Where a bill of lading is issued, the consent of the *Ablader* (section 513 (2)) shall be required. However, the goods may be loaded on deck also without such consent, provided they are placed in or on an article of transport suitable for on-deck carriage, and also provided that the deck has been properly fitted out to carry such an article of transport.

Section 487

Accompanying documents

(1) The shipper shall provide to the carrier such documents and such information that may be necessary for official processing prior to delivery of the goods, in particular for customs clearance.

(2) The carrier shall be liable for any detriment caused by the loss of, physical damage to, or incorrect use of the documents entrusted to the carrier, unless such detriment could not have been avoided by a prudent carrier exercising due care. The liability of the carrier shall be limited to the amount which would have been payable if the goods had been lost. Any agreement expanding or further restricting this liability shall be effective only if it is negotiated in detail, even if it is for a number of similar contracts between the same parties. However, any provision in the bill of lading further reducing the liability shall be ineffective with respect to third parties.

Section 488

Liability of the shipper and of third parties

(1) The shipper shall compensate the carrier for damages and expenditures caused by any of the following:

1. The inaccuracy or incompleteness of the required information regarding the goods;
2. The failure to disclose the goods' dangerous nature to the carrier;
3. The insufficient packing or marking of the goods; or
4. The lack, incompleteness or inaccuracy of the documents or information stipulated in section 487 (1).

However, the shipper shall be released from liability if it is not responsible for the breach of duties.

(2) If the third party mentioned in Section 482 (2) provides incorrect or incomplete information when handing over the goods for carriage, or if it fails to disclose the goods' dangerous nature to the carrier, then the carrier may also demand compensation from said third party for the damages the carrier has suffered and the expenditures it has incurred as a result. This shall not apply if the third party is not responsible for the breach of duties.

(3) Where a bill of lading is issued, the shipper and the *Ablader* (Section 513 (2)) shall compensate the carrier, even if they are not at fault, for the damages the carrier has suffered and the expenditures it has incurred as a result of:

1. The inaccuracy or incompleteness of any information in the bill of lading provided pursuant to Section 515 (1) number 8 as regards the goods' quantity, number or weight, or as regards the leading marks used for identification, or

2. The failure to disclose the goods' dangerous nature to the carrier.

However, the shipper and the *Ablader* shall each be liable to the carrier only for the damages and expenditures resulting from the respective inaccurate or incomplete information that either of them provided.

(4) Where conduct on the part of the carrier contributed to the damages suffered or expenditures incurred, then the obligation pursuant to subsection (3) of the shipper and of the *Ablader* to compensate the carrier, as well as the extent of such compensation, shall depend on the extent to which such conduct has contributed to the damages and expenditures.

(5) Any agreement excluding the liability pursuant to subsections (1), (2), or (3) shall be effective only if it is negotiated in detail, even if it is for a number of similar contracts between the same parties. In derogation from the first sentence, the compensation of damages to be provided by the shipper or the *Ablader* may be limited, in terms of its amount, also by preworded terms of contract.

Section 489

Termination by the shipper

(1) The shipper may terminate the contract for the carriage of general cargo at any time.

(2) If the shipper so terminates the contract, the carrier may claim either:

1. The agreed freight, as well as any expenditures that the carrier is entitled to have refunded, after setting off any expenses it saved as a result of the termination of the contract, or anything it acquired or failed, in bad faith, to acquire; or

2. Payment of one third of the freight agreed (*dead freight, Fautfracht*).

Where the termination is based on reasons within the sphere of risks to be borne by the carrier, no claim to payment of *Fautfracht* pursuant to the first sentence number 2 shall arise; in such event, the entitlement pursuant to the first sentence number 1 shall likewise not be applicable insofar as the carriage is of no interest to the shipper.

(3) If goods have already been loaded and stowed prior to the termination, the carrier shall be entitled to take, at the shipper's cost, the measures set out in section 492 (3) second through fourth sentences. Where the termination is based on grounds within the sphere of risks to be borne by the carrier, the carrier must bear the costs, notwithstanding the first sentence.

Section 490

Carrier's rights if the goods are not handed over for carriage in due time

(1) Should the shipper fail to have the goods handed over for carriage within the time contractually agreed therefor, or should it fail to do so completely, the carrier may set a reasonable deadline within which the goods are to be handed over.

(2) If the goods have not been handed over for carriage by the deadline set pursuant to subsection (1), or if it is obvious that the goods will not be handed over for carriage within the

deadline set, then the carrier may terminate the contract and assert the claims pursuant to section 489 (2).

(3) If only a part of the goods has been handed over for carriage by the deadline set pursuant to subsection (1), then the carrier shall be entitled to carry that part of the goods that has already been loaded and stowed; in this case, the carrier is entitled to the full freight as well as compensation for any expenditures incurred because of the incompleteness of the consignment. However, any freight for goods which the carrier transports on the same ship in place of the goods which had not been loaded and stowed shall be deducted from the full freight. In addition, the carrier is entitled to demand further security to the extent that the incompleteness of the consignment causes it to lose security for the full freight.

(4) The carrier may exercise the rights set out in subsection (2) or (3) also without setting a deadline if the shipper or the third party mentioned in section 482 (2) refuses to hand over the goods for carriage, such refusal being made in earnest and being conclusive.

Furthermore, it may also terminate the contract pursuant to subsection (2) without setting a deadline if unusual circumstances dictate that, after balancing out the respective interests of the parties, it cannot be reasonably expected of the carrier to continue the contractual relationship.

(5) If the failure to hand over the goods in due time occurred for reasons within the sphere of risks to be borne by the carrier, the carrier shall not be entitled to the above rights.

Section 491

Subsequent instructions

(1) Unless otherwise provided for by section 520 (1), the right of disposal in relation to the goods is vested in the shipper. Specifically, it may instruct the carrier to stop the goods in transit or to deliver them to another destination, or that it deliver them to a different discharging wharf or to another consignee. The carrier is obliged to comply with such instructions only insofar as this can be done without the risk of prejudice to its business, or damage to the shippers or consignees of other shipments. The carrier may claim from the shipper reimbursement for the expenditures occasioned by the carrier's having carried out the instruction, and may also demand reasonable remuneration; the carrier may require an advance payment as a precondition to carrying out the instruction.

(2) The shipper's right of disposal shall expire following the goods' arrival at the discharging wharf. Henceforth, the right of disposal pursuant to subsection (1) shall lie with the consignee. Should the consignee exercise this right, it shall reimburse the carrier for the resulting expenditures the latter must incur, while also paying reasonable remuneration; the carrier may require an advance payment as a precondition to carrying out the instruction.

(3) If as a sea waybill has been issued, the shipper may exercise its right of disposal only upon the executed copy of the sea waybill intended for the shipper being presented, provided that the stipulations of same so prescribe.

(4) Should the carrier intend not to comply with any instructions issued to it, then it shall notify the party issuing such instructions of its refusal to do so, and must do so without delay.

(5) If the exercise of the right of disposal has been made dependent upon the presentation of a sea waybill, but the carrier carries out instructions without having had an executed copy of the sea waybill presented to it, then the carrier shall be liable to compensate the rightholder for any loss or damage caused thereby. This liability shall not exceed the amount which would have been payable if the goods had been lost. Any arrangement expanding or further restricting the liability shall be effective only if it is negotiated in detail, whether for one or several similar contracts between the same parties.

Section 492

Obstacles to carriage and delivery

(1) If it becomes evident, after the goods have been taken over, that the goods' carriage or delivery cannot be performed in accordance with the contract, the carrier shall ask for instructions from the party who has the right of disposal in relation to the goods pursuant to section 491 or section 520. If that party is the consignee, and if the consignee cannot be

located or refuses to accept the goods, the shipper shall have the right of disposal pursuant to the first sentence, provided no bill of lading has been issued; the sea waybill need not be produced in such a case even if its terms require that this be done when exercising the right of disposal. If instructions have been issued to the carrier and the obstacle is not within the sphere of risks to be borne by the carrier, the carrier may assert claims pursuant to section 491 (1) fourth sentence.

(2) If the obstacle to carriage or delivery has arisen after the consignee has issued instructions, based on its right of disposal pursuant to section 491, that the goods are to be delivered to a third party, the consignee and the third party shall be deemed to be the shipper and the consignee respectively for the purposes of applying subsection (1).

(3) If the carrier is unable to obtain instructions, within a reasonable period of time, with which it would have had to comply pursuant to section 491 (1) third sentence, it shall take such measures as seem to be in the best interest of the party having the right of disposal. For instance, the carrier may discharge the goods from the ship and store them, it may entrust them to a third party for storage for the account of the party having the right of disposal pursuant to section 491 or section 520, or it may return them; should the carrier entrust a third party with the goods, it shall be liable only for exercising due diligence in choosing such third party. The carrier may also have the goods sold pursuant to section 373 subsections (2) through (4) if they are perishable or if their condition warrants such a measure, or if the costs to be incurred otherwise are out of proportion to the goods' value. The carrier may destroy goods that cannot be sold. The carriage is deemed to have been terminated once the goods have been discharged from the ship.

(4) The carrier is entitled to reimbursement of the expenditures necessitated by the measures taken pursuant to subsection (3), and to reasonable remuneration, unless the obstacle falls within the sphere of risks to be borne by the carrier.

Section 493

Payment; calculation of freight

(1) The freight shall be payable on delivery of the goods. In addition to the freight, the carrier is entitled to be reimbursed for its expenditures insofar as these were incurred in the interests of the goods and the carrier could reasonably regard them as necessary in the circumstances.

(2) The entitlement to freight shall cease should it be impossible to perform the carriage. If the carriage is terminated prematurely due to an obstacle to carriage or delivery, the carrier shall be entitled to a pro-rata share of the freight for the completed part of the carriage, provided said partial carriage was of interest to the shipper.

(3) Notwithstanding subsection (2), the carrier shall continue to be entitled to payment of freight if the carriage becomes impossible for reasons with the sphere of risk to be borne by the shipper, or for reasons arising at a point in time at which the shipper is defaulting on acceptance. However, the carrier must accept that any savings, or any monies it has earned, or has failed, in bad faith, to earn, are set off from this amount.

(4) If, for reasons within the sphere of risks to be borne by the shipper, delay occurs after the start of carriage and prior to arrival at the discharging wharf, then the carrier shall be entitled to reasonable remuneration in addition to the freight.

(5) If the freight is agreed by reference to the number, weight or quantity otherwise expressed of the goods, it shall be presumed for the purpose of calculating the freight that the statement in the sea waybill or bill of lading made in this regard is correct; this presumption shall apply even if such statement is accompanied by a reservation justified by the indication that there had been no reasonable means of checking the accuracy of the information.

Section 494

Rights of consignee; duty to pay

(1) After arrival of the goods at the discharging wharf, the consignee may require the carrier to deliver the goods to it in exchange for the performance of the obligations under the

contract for the carriage of general cargo. If the goods have been delivered damaged or late or have been lost, the consignee may assert, in its own name, the rights against the carrier under the contract for the carriage of general cargo; the shipper remains entitled to assert these claims. It makes no difference in this context whether the consignee or the shipper is acting in its own interest or in the interest of another party.

(2) The consignee asserting its right pursuant to subsection (1) first sentence must pay the freight up to the amount specified in the accompanying document. Where no accompanying document has been issued, or no accompanying document has been presented to the consignee, or where the amount payable as freight is not evidenced by the accompanying document, the consignee is to pay the freight agreed with the shipper, provided it is not unreasonable.

(3) Furthermore, the consignee asserting its right pursuant to subsection (1) first sentence is to pay remuneration pursuant to section 493 (4), provided that the consignee was notified of the amount owed at delivery of the goods.

(4) The shipper remains under obligation to pay the sums owed under the contract.

Section 495 Carrier's lien

(1) For all of its claims under a contract for the carriage of general cargo, the carrier shall have a lien on the goods delivered to it for carriage, whether they belong to the shipper, the *Ablader*, or a third party that has consented to the carriage of the goods. The carrier shall also have a lien on the goods of the shipper for all undisputed claims under other contracts concluded with the shipper regarding marine freight, freight, forwarding, and storage. The lien extends to the accompanying documents.

(2) The lien shall persist for as long as the carrier has possession of the goods, and specifically for as long as it has the right of disposal over them by means of a bill of lading, consignment bill, or warehouse warrant.

(3) The lien shall persist even after delivery, provided the carrier asserts the lien by legal action within ten (10) days after delivery, and provided the goods are still in the consignee's possession.

(4) The warning regarding the impending sale of a pledged item provided for by section 1234

(1) of the Civil Code (*Bürgerliches Gesetzbuch*, BGB), as well as the notifications stipulated by sections 1237 and 1241 of the Civil Code, are to be addressed to the consignee, who holds the right of disposal pursuant to section 491 or section 520. If the consignee cannot be traced, or if the consignee refuses to accept the goods, then the warning and the notifications are to be addressed to the shipper.

Section 496 Subsequent carrier

(1) Where carriage is provided by several carriers and where it is incumbent on the last of them to collect, at delivery, the payments owing to the preceding carriers, the last carrier is to exercise the rights of the preceding carriers, particularly the lien. The lien of each preceding carrier shall persist for as long as the lien of the last carrier is in force.

(2) If a preceding carrier is paid by a subsequent carrier, the claim and the lien of the former shall devolve to the latter.

(3) Subsections (1) and (2) shall also apply to the claims and rights of any forwarder who has participated in performing the carriage.

Section 497 Ranking order of several liens

Should several liens covering the same goods arise pursuant to sections 397, 440, 464, 475b and 495, the ranking of these liens as between themselves shall be determined pursuant to section 442.

Subtitle 2
Liability for loss of or physical damage to the goods

Section 498
Grounds for liability

- (1) The carrier shall be liable for any damage resulting from the loss of or physical damage to the goods occurring between the time the goods are taken over and their delivery.
- (2) The carrier shall be released from liability pursuant to subsection (1) insofar as the loss of or physical damage to the goods was due to circumstances which could not have been avoided by a prudent carrier exercising due care. If the goods were carried by a ship that was not in seaworthy or cargoworthy condition, and if the facts of the case indicate a likelihood that the goods were lost or physically damaged due to the ship's lack of seaworthiness or cargoworthiness, then the carrier shall be released from liability pursuant to subsection (1) only if the carrier can prove that the lack of seaworthiness or cargoworthiness could not have been discovered prior to commencement of the journey by a prudent carrier exercising due care.
- (3) If the damaged party contributed to the occurrence of the damage, due to its fault or neglect, then the obligation to pay compensation and the amount of the compensation payable shall depend on the circumstances, and specifically on the extent to which the damages were caused primarily by one or the other party.

Section 499
Particular grounds for exclusion of liability

- (1) The carrier shall be relieved of liability insofar as the loss of or physical damage to the goods was caused by any of the following circumstances:
1. Perils, dangers, and accidents of the sea or other navigable waters;
 2. War or hostilities, social unrest, acts by public enemies, or measures taken by sovereigns, as well as quarantine restrictions;
 3. Seizure by a court;
 4. Strikes, lockouts, or other restraints of labour;
 5. Acts or omissions by the shipper or the *Ablader*, specifically insufficiency of packing or improper marking of the cargo units by the shipper or the *Ablader*;
 6. Inherent features or characteristics of certain goods that make them particularly susceptible to damage, particularly through breakage, rust, internal spoiling, drying, leakage, or normal wastage in bulk or weight;
 7. The carriage of live animals;
 8. Measures serving to save human life at sea;
 9. Salvage measures at sea.

The first sentence shall not apply insofar as the damage could have been avoided by a prudent carrier exercising due care.

(2) If damage has occurred which, given the circumstances, might have been due to one of the risks set out in subsection (1) first sentence, then the presumption shall be that the corresponding damages have in fact been caused by this risk. The first sentence shall not apply if the goods were carried by a ship that was not seaworthy or not cargoworthy.

(3) If the carrier, by virtue of the contract for carriage of general cargo, is under obligation to protect the goods particularly from the effects of heat, cold, variations in temperature, humidity, vibrations or similar effects, then the carrier may avail itself of the defences set out in subsection (1) first sentence number 6 only if it has taken all of the measures incumbent upon it in light of the circumstances, in particular in respect of the choice, maintenance, and

use of specific equipment, and only if it has complied with any special instructions that may have been issued.

(4) The carrier may avail itself of the defences set out in subsection (1) first sentence number 7 only if it has taken all of the measures incumbent upon it in the circumstances, and if it has complied with any specific instructions that may have been issued.

Section 500

Inadmissible loading and stowing of goods on deck

If the carrier has loaded and stowed goods on deck without having obtained the consent required from the shipper or from the *Ablader* pursuant to section 486 (4), the carrier shall be liable for any damages arising from the goods' loss or physical damage as a result of so being loaded and stowed on deck, even if the damages occurred without the direct fault or neglect of the carrier. Where the circumstances set out in the first sentence are given, the presumption shall be that the goods' loss or physical damage is attributable to the fact that they were loaded and stowed on deck.

Section 501

Responsibility for other persons

The carrier must assume responsibility for any fault or neglect on the part of its servants and of the ship's company to the same extent as if the fault or neglect in question were its own. The same shall apply to fault or neglect on the part of other persons whose services it is using for the carriage of goods.

Section 502

Compensation based upon value

(1) Insofar as the carrier is liable to pay compensation for the total or partial loss of goods pursuant to the provisions of the present Subtitle, such compensation shall be calculated by reference to the value that the goods would have had if they had been delivered in due time at the destination contractually agreed.

(2) Insofar as the carrier is liable to pay compensation for the physical damage to the goods pursuant to the provisions of the present Subtitle, the measure of the damages payable shall be the difference between the value of the damaged goods at the place and time of delivery and the value the goods would have had at the place and time of delivery had they not been physically damaged. The costs necessary in order to mitigate or remedy the damage are considered to be equal to the amount of the difference determined in accordance with the first sentence.

(3) The value of the goods shall be fixed in accordance with their current market price, or, if there is no such price, in accordance with the normal market value of goods of the same kind and having the same characteristics. If the goods were sold immediately prior to being taken over for carriage, the purchase price noted in the seller's invoice, including the costs of carriage factored into said price, shall be considered to be the current market price.

(4) The amount to be compensated pursuant to the subsections above is to be offset by the amount saved in customs duties and other costs as a result of the loss or physical damage, or by the amount that was saved due to a loss of cargo.

Section 503

Assessment costs

In the event of loss of or damage to the goods, the carrier shall bear the costs of assessing the damage; this shall be in addition to the compensation payable pursuant to section 502.

Section 504

Limit of liability in the event the goods are damaged

(1) The compensation payable for loss or physical damage pursuant to sections 502 and 503 shall be limited to the amount of 666.67 units of account per package or per unit, or to the amount of 2 units of account per kilogram of the goods' gross weight, whichever amount is higher. If a container, pallet or any other article of transport is used to consolidate cargo

units, then each package and each unit listed in an accompanying document as being contained in a given article of transport shall be deemed to be a “package” or “unit” within the meaning of the first sentence. Inasmuch as the accompanying document does not provide this information, the given article of transport shall be deemed to be a package or unit.

(2) If the goods consist of several cargo units (cargo) and only individual cargo units have been lost or physically damaged, then the limitation pursuant to subsection (1) shall be calculated on the basis:

1. Of the entire cargo if the entire cargo has depreciated in value; or
2. Of the part of the cargo that has depreciated in value, if only a part of the cargo has depreciated in value.

Section 505 **Unit of account**

The unit of account referred to under the present Subtitle shall be the Special Drawing Right (SDR) of the International Monetary Fund. Each amount shall be converted into euros using the exchange rate between the euro and the Special Drawing Right on the date of delivery of the goods, or on the date agreed by the parties. The value of the euro, in terms of the Special Drawing Right, is to be determined using the calculation that the International Monetary Fund applies for its operations and transactions on the day in question.

Section 506 **Non-contractual claims**

(1) The exemptions from and limitations on liability provided for under the present Subtitle and under a contract for the carriage of general cargo shall also apply to any non-contractual claims that the shipper or the consignee may have against the carrier for loss of or physical damage to the goods.

(2) The carrier may also lodge the objections pursuant to subsection (1) against any non-contractual claims that third parties may assert for loss of or physical damage to the goods. However, these objections may not be lodged if any of the following situations apply:

1. They are made with regard to an agreement that deviates from the regulations stipulated by the present Subtitle to the detriment of the shipper;
2. The third party had not consented to carriage of the goods, and the carrier was aware that the shipper did not have the authority to send the goods, or was unaware of this due to its own gross negligence; or
3. The goods, prior to being taken over for carriage, had been lost while in the possession of the third party, or by a person deriving its right to possession from said third party.

The second sentence, number 1, shall not be applicable, however, to any arrangement permissibly made under section 512 (2) number 1 regarding the carrier's liability for a damage caused in the course of steering or otherwise operating the ship, or caused by fire or explosion on board the ship.

Section 507 **Conduct barring exemptions from liability and limitations of liability**

The exemptions from and limitations of liability provided for under the present Subtitle and under a contract for the carriage of general cargo shall not apply in the following cases:

1. The damages were caused by an act or omission of the carrier, done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result; or

2. The carrier had agreed with the shipper or the *Ablader* that the goods were to be carried below deck, whereas the damages resulted from the goods having been loaded and stowed on deck.

Section 508

Liability of servants and of the ship's company

(1) If non-contractual claims are asserted for loss of or physical damage to the goods against one of the carrier's servants, that servant, too, may avail himself of the exemptions from liability and limitations of liability provided for under the present Subtitle and under the contract for the carriage of general cargo. The same shall apply if the claims are asserted against a member of the ship's company.

(2) Recourse to the releases and limitations of liability pursuant to subsection (1) shall be ruled out if the debtor has acted intentionally or recklessly and with knowledge that such damage would probably result.

(3) If both the carrier and one of the persons mentioned in subsection (1) are responsible, due to fault or neglect, for the loss of or physical damage to the goods, they shall be liable jointly and severally.

Section 509

Actual carrier

(1) Where the carriage is performed, in whole or in part, by a third party who is not the carrier, then that third party (actual carrier) shall be liable, in the same way as the carrier, for any damages resulting from the loss of or physical damage to the goods during the carriage performed by it.

(2) Any contractual arrangements with the shipper or the consignee whereby the carrier expands its own liability shall affect the actual carrier only if the actual carrier has agreed to them in writing.

(3) The actual carrier may lodge all objections and avail itself of all defences to which the carrier is entitled under the contract for the carriage of general cargo.

(4) The carrier and the actual carrier shall be liable jointly and severally.

(5) If a claim is asserted against a servant of the actual carrier or against a member of the ship's company, then Section 508 is to be applied *mutatis mutandis*.

Section 510

Notice of damage

(1) If any loss of or physical damage to the goods is externally apparent and the consignee or the shipper fails to notify the carrier of said loss or physical damage on delivery of the goods, at the latest, then the presumption shall be that the goods were delivered in their entirety and in undamaged condition. The notice must describe the loss or physical damage in sufficiently clear terms.

(2) The presumption pursuant to subsection (1) shall also apply if the loss or physical damage was not externally apparent and no notice was filed within three (3) days of delivery.

(3) The notice of damage must be filed in text form (a readable statement that is permanently valid without a signature having been applied). Timely dispatch of the notice shall suffice in order to comply with the corresponding deadline.

(4) If notice of the loss or physical damage is made upon delivery, it shall suffice for such notice to be given to the party delivering the goods.

Section 511

Presumption of loss

(1) The person entitled to raise a claim may consider the goods lost if delivery has not taken place within a period that is twice as long as the agreed delivery period, but not shorter than thirty (30) days or, in cases involving cross-border carriage, within a period of sixty (60) days. The first sentence shall not apply if the carrier is relieved from its obligation to deliver the

goods due to a right of retention or lien, or if a lien has been placed on the goods for a contribution owed to the general average, thereby preventing delivery of the goods.

(2) If the person entitled to raise a claim receives compensation for the loss of goods, the person entitled to raise a claim may demand, upon receiving such compensation, to be notified immediately in the event the goods are found.

(3) Within one (1) month of having been notified of the goods' having been found, the person entitled to raise a claim may demand that the goods be delivered to it concurrently with its repaying the compensation, where appropriate less any costs that may have been a part of the compensation. Any obligation to pay the freight and any claims to compensation of damages shall remain unaffected.

(4) If the goods have been found after the compensation has been paid and the person entitled to raise a claim has not asked to be informed of such event, or if, having been informed, the person entitled to raise a claim does not assert its claim to delivery of the goods, then the carrier has the right of free disposal in relation to the goods.

Section 512

Divergent arrangements

(1) The arrangements made may diverge from the provisions of the present Subtitle only if their particulars have been negotiated individually; this shall also apply where such arrangements are agreed for a plurality of similar contracts between the same contracting parties.

(2) Notwithstanding the provisions under subsection (1), however, the pre-worded terms of contract may stipulate the following:

1. That the carrier is not responsible for any fault or neglect on the part of its servants or of the ship's company, insofar as the corresponding damage was caused in the course of steering or otherwise operating the ship, but not in the course of implementing measures taken predominantly for the benefit of the cargo, or was caused by fire or explosion on board the ship.

2. That the liability of the carrier for loss or physical damage will be limited to higher amounts than those set out in Section 504.

Subtitle 3

Accompanying documents

Section 513

Entitlement to issuance of a bill of lading

(1) Unless otherwise agreed in the contract for the carriage of general cargo, the carrier must issue to the *Ablader*, at the latter's request, an order bill of lading that – at the choice of the *Ablader* – is made out "To Order" of the *Ablader*, "To Order" of the consignee, or simply "To Order" (blank); in the last case, this shall be deemed to mean "To Order" of the *Ablader*. The master as well as any other party authorised to sign bills of lading on behalf of the *Reeder* shall be entitled to issue the bill of lading on behalf of the carrier.

(2) The "*Ablader*" shall be defined as the party which delivers the goods to the carrier for carriage and which has been designated as *Ablader* by the shipper so as to be recorded as such in the bill of lading. If a party other than the *Ablader* delivers the goods for carriage, or if no party has been designated as *Ablader*, then the shipper shall be deemed to be the *Ablader*.

Section 514

"On-board" bill of lading; "received-for-shipment" bill of lading

(1) The bill of lading shall be issued once the carrier has taken over the goods. By virtue of the bill of lading, the carrier confirms receipt of the goods and enters into obligation to carry them to their destination and to deliver them to the person entitled by virtue of the bill of lading against return of said bill of lading.

(2) Once the goods have been taken on board, the carrier shall issue a bill of lading specifying when and by which ship the goods were taken on board (“on-board” bill of lading). If a bill of lading already has been issued before the goods are taken on board (“received-for-shipment” bill of lading), then the *Ablader* may require the carrier to add a notation specifying when and by which ship the goods were taken on board as soon as this has occurred (“shipped-on-board” notice).

(3) The bill of lading is to be issued in as many original, executed copies as the *Ablader* requests.

Section 515 **Contents of the bill of lading**

(1) The bill of lading must include the following information:

1. Place and date of issuance;
2. Name and address of the *Ablader*;
3. Name of the ship;
4. Name and address of the carrier;
5. Port of loading and destination;
6. Name and address of the consignee and special address, if any, for notification;
7. Nature of the goods along with their externally apparent condition and characteristic features;
8. Quantity, number or weight of the goods and their permanent, legible leading marks;
9. Freight owed at delivery, costs incurred up to the time of delivery as well as a note concerning payment of the freight;
10. Number of original, executed copies.

(2) At the *Ablader's* request, the information to be provided pursuant to subsection (1) numbers 7 and 8 must be recorded as the *Ablader* had provided it to the carrier prior to taking over the goods, in text form (a readable statement that is permanently valid without a signature having been applied).

Section 516 **Bill of lading format; authorisation to issue statutory instruments**

(1) The carrier must sign the bill of lading; reproductions of the personal signatures by means of printing or stamp shall be sufficient.

(2) An electronic record having the same functions as a bill of lading shall be deemed equivalent to a bill of lading, provided that the authenticity and integrity of the record are assured (electronic bill of lading).

(3) The Federal Ministry of Justice and Consumer Protection is hereby empowered to determine by regulation, issued in agreement with the Federal Ministry of the Interior and not requiring the consent of the Federal Council (*Bundesrat*), the details of issuing, presenting, returning and transmitting an electronic bill of lading, as well as the particulars of the process of posting retroactive entries to an electronic bill of lading.

Section 517 **Evidentiary effect of the bill of lading**

(1) A bill of lading shall give rise to the presumption that the carrier has taken over the goods in the state described pursuant to section 515 subsection (1) numbers 7 and 8. If the description given therein refers to the contents of a closed article of transport, then the bill of lading shall establish the presumption set out in the first sentence only if the carrier has

inspected the contents and the results of said inspection have been recorded in the bill of lading. If the bill of lading does not provide any information regarding the goods' condition or characteristic features as externally apparent, then the bill of lading shall establish the presumption that the externally apparent condition and characteristic features of the goods were satisfactory at the time the carrier took them over.

(2) The bill of lading shall not give rise to the presumption pursuant to subsection (1) insofar as the carrier has entered a reservation in the bill of lading. Such reservation must indicate the following:

1. The condition of the goods upon being taken over by the carrier, or the goods' characteristic features at the time they were taken over;
2. Which information furnished in the bill of lading is incorrect, and what the correct information should be;
3. The carrier's justification for assuming that the information is incorrect;
4. Why the carrier had no sufficient opportunity to verify the information furnished.

Section 518

Position of *Reeder* when carrier data are inadequate

If a bill of lading issued by the master or by any other party authorised to sign bills of lading on behalf of the *Reeder* does not identify the carrier, or if said bill of lading identifies a person as a carrier who is in fact not the carrier, then the rights and duties under the bill of lading shall devolve onto the *Reeder* instead of the carrier.

Section 519

Entitlement under the bill of lading; legitimation

The claims by virtue of a contract for the carriage of goods by sea as confirmed in a bill of lading may be asserted only by the person entitled by virtue of the bill of lading. The presumption shall be that the rightful holder of a bill of lading is also the person entitled by virtue of the bill of lading. A party shall be deemed the rightful holder of a bill of lading if the bill of lading in question meets any one of the following criteria:

1. It is made out to "To Bearer";
2. It is made out "To Order" and identifies the holder as the consignee, either directly or through an unbroken chain of endorsements; or
3. It is made out in the name of the holder.

Section 520

Carrying out instructions

(1) If a bill of lading has been issued, then solely its rightful holder shall be entitled to the right of disposal pursuant to sections 491 and 492. The carrier may carry out instructions only against presentation of all the executed copies of the bill of lading. However, the carrier may not carry out any instructions issued by the legitimate holder of the bill of lading if the carrier is aware, or grossly negligently unaware, that the rightful holder of the bill of lading is not the person entitled by virtue of same.

(2) If the carrier carries out instructions without having been presented with all executed copies of the bill of lading, the carrier shall be liable to the person entitled by virtue of the bill of lading for any resulting damages the latter may suffer. The liability shall not exceed the amount which would have been payable if the goods had been lost.

Section 521

Delivery in exchange for the bill of lading

(1) Upon the goods' arrival at the discharging wharf, the rightful holder of the bill of lading shall be entitled to demand that the carrier make delivery of the goods. Opting to exercise

this right shall oblige the rightful holder of the bill of lading to pay freight and any other remuneration pursuant to section 494 subsections (2) and (3).

(2) The carrier shall be obliged to deliver the goods only in exchange for a bill of lading in which delivery has been confirmed, and against payment in full of any outstanding amounts owed pursuant to section 494 subsections (2) and (3). However, the carrier may not deliver the goods to the rightful holder of the bill of lading if the carrier is aware, or grossly negligently unaware, that the rightful holder of the bill of lading is not also the person entitled by virtue of same.

(3) If several executed copies of the bill of lading have been made, then the goods are to be delivered to a rightful holder of even just one executed copy of the bill of lading. Should several rightful holders claim the goods, the carrier must deposit the goods in a public warehouse or in some other form of safe storage and must accordingly inform the holders who have come forward, while citing the reasons for proceeding in this manner. In this case, the carrier may have the goods sold off pursuant to section 373 subsections (2) through (4), provided the goods are if they are perishable or if their condition warrants such a measure, or if the costs foreseeably to be incurred otherwise are out of proportion to the goods' value.

(4) If the carrier makes delivery of the goods to any other party than the rightful holder of the bill of lading or, assuming the situation set out in subsection (2) second sentence, to any other party than the person entitled by virtue of the bill of lading, then the carrier shall be liable for the resulting damages the person entitled by virtue of the bill of lading may suffer. The liability shall not exceed the amount which would have been payable if the goods had been lost.

Section 522

Objections

(1) The carrier may lodge objections against the person entitled by virtue of the bill of lading only insofar as they concern the validity of the statements made in the bill of lading, or insofar as they arise from the contents of the bill of lading, or insofar as the carrier is directly entitled to such objections vis-à-vis the person entitled by virtue of the bill of lading. An agreement to which the bill of lading merely makes reference is not incorporated into the bill of lading.

(2) The carrier cannot rebut the presumptions pursuant to section 517 vis-à-vis a consignee, who is identified in the bill of lading and to whom the bill of lading has been transferred, unless the consignee was aware, or grossly negligently unaware, at the time the bill of lading was transferred, that the information therein is inaccurate. The same shall apply in relation to any third party to whom the bill of lading was transferred.

(3) If the person entitled by virtue of the bill of lading asserts a claim against the actual carrier pursuant to section 509, then the actual carrier, too, may raise the objections pursuant to subsection (1). Notwithstanding the provisions under subsection (2), moreover, the actual carrier may rebut the presumptions pursuant to section 517 if the bill of lading was issued neither by the actual carrier, nor by a party whom the actual carrier authorised to sign bills of lading.

Section 523

Liability for inaccurate information in the bill of lading

(1) The carrier shall be liable for resulting damages that the person entitled by virtue of a bill of lading may suffer due to a failure to set out the information and reservations in the bill of lading required by section 515 and section 517 (2), or due to the inaccuracy of the information and reservations provided in the bill of lading. This shall specifically apply if the goods' externally apparent condition was not satisfactory at the time of their being taken over by the carrier, and if the bill of lading includes neither any information in this regard pursuant to section 515 (1) number 7, nor any reservation pursuant to section 517 (2). However, the liability pursuant to the first and second sentences shall not apply unless the carrier knew – or should have known, had it exercised the due care of a prudent carrier – that the information was missing or was inaccurate or incomplete.

(2) If an “on-board” bill of lading is issued before the carrier has taken over the goods, or if a “shipped-on-board” notice is included in a “received-for-shipment” bill of lading prior to the goods being loaded on board the ship, then the carrier shall be liable for resulting damages that the person entitled by virtue of the bill of lading may suffer, even if they occur without the fault or neglect of the carrier.

(3) If a bill of lading issued by the master or by any other party authorised to sign bills of lading on behalf of the *Reeder* does not accurately state the name of the carrier, then the *Reeder*, too, shall be liable for resulting damages that the person entitled by virtue of the bill of lading may suffer due to the inaccuracy. The liability set forth in the first sentence shall not apply unless the issuer knew – or should have known, had it exercised the due care of a prudent carrier – that the name of the carrier was either missing or inaccurately stated.

(4) The liability pursuant to subsections (1) through (3) shall not exceed the amount which would have been payable if the goods had been lost.

Section 524

Transfer effected by the bill of lading (“effect of tradition”)

Provided the carrier is in possession of the goods, the transfer of a bill of lading to the consignee identified therein shall have the same effects, in terms of the acquisition of rights to the goods, as does the delivery of the goods for carriage. The same shall apply to a transfer of the bill of lading to third parties.

Section 525

Divergent provision made in the bill of lading

A provision made in the bill of lading that diverges from the regulations on liability set out in sections 498 through 511 or in section 520 (2), section 521 (4) or section 523 shall be effective only if the pre-requisites of section 512 have been met.. The carrier may not rely, however, on any provision set out in the bill of lading which diverges from the regulations on liability cited in the first sentence to the detriment of the party entitled under the bill of lading vis-à-vis a recipient identified in the bill of lading to whom the bill of lading was transferred, nor may it do so vis-à-vis a third party to whom the bill of lading was assigned. The second sentence shall not apply to any provision made pursuant to section 512 (2) number 1.

Section 526

Sea waybill; authorisation to issue statutory instruments

(1) Unless it has issued a bill of lading, the carrier may issue a sea waybill. Section 515 is to be applied *mutatis mutandis* to the content of the sea waybill, subject to the proviso that the shipper takes the stead of the *Ablader*.

(2) In the absence of proof to the contrary, the sea waybill shall serve as *prima facie* evidence of the conclusion of the contract for the carriage of general cargo; it shall also serve as *prima facie* evidence of the contract’s contents, as well as of the fact that the carrier has taken over the goods. Section 517 shall apply *mutatis mutandis*.

(3) The sea waybill must be signed by the carrier; a reproduction of the personal signature by means of printing or stamp shall be sufficient.

(4) An electronic record having the same functions as the sea waybill shall be deemed equivalent to the sea waybill, provided that the authenticity and integrity of the record are assured (electronic sea waybill). The Federal Ministry of Justice and Consumer Protection is hereby empowered to determine by regulation, issued in agreement with the Federal Ministry of the Interior and not requiring the consent of the Federal Council (*Bundesrat*), the details of issuing, presenting, returning and transmitting an electronic sea waybill, as well as the particulars of the process of posting retroactive entries to an electronic sea waybill.

Title 2

Voyage charter contract

Section 527

Voyage charter contract

(1) By virtue of the voyage charter contract the carrier is obliged to carry the goods to the destination, in one or more specified voyages by sea, using either the entirety of a specified ship, a proportion of a specified ship, or a specifically designated space within such ship, and to deliver the goods to the consignee. Each of the parties may demand that the voyage charter contract be recorded in writing.

(2) Sections 481 through 511 and sections 513 through 525 are to be applied *mutatis mutandis* to the voyage charter contract unless otherwise provided for by sections 528 through 535.

Section 528

Port of loading; loading wharf

(1) In order to load and stow the goods on board, the carrier must berth the ship at the loading wharf designated in the voyage charter contract or at the loading wharf to be designated by the shipper following conclusion of the voyage charter contract.

(2) If no port of loading or loading wharf has been designated in the voyage charter contract and the shipper is to designate the port of loading or loading wharf following conclusion of the voyage charter contract, then the shipper must exercise due care in choosing a secure port of loading or loading wharf.

Section 529

Notice of readiness for loading

(1) As soon as the ship berthed at the loading wharf is ready for the goods to be loaded and stowed on board, the carrier must notify the shipper of readiness for loading. Insofar as the shipper has yet to designate the loading wharf, the carrier may already give notice of readiness for loading once the ship has reached the port of loading.

(2) The notice of readiness for loading must be given during the office hours customarily kept at the loading wharf. If notice of readiness for loading is given outside of the office hours customary for the location of the loading wharf, then said notice shall be deemed to have been received at the start of the next office hour customary for the location.

Section 530

Loading time; laytime on demurrage

(1) Loading time shall begin on the day following the day of notice.

(2) Unless otherwise agreed, no separate remuneration may be demanded for loading time.

(3) If the carrier waits beyond the loading time on the basis of a contractual agreement between the parties or for reasons outside of the sphere of risks to be borne by it (laytime on demurrage), the carrier shall be entitled to reasonable remuneration (demurrage). If, following the ship's arrival at the discharging wharf, the consignee asserts its right pursuant to section 494 (1) first sentence, then the consignee, too, shall owe demurrage, provided that, upon delivery of the goods, the consignee was informed of the amount owed.

(4) Absent an agreement to any other effect, the loading time and the laytime on demurrage must correspond to a period that is reasonable under the circumstances. In calculating the loading time and the laytime on demurrage, days shall be counted in unbroken sequence, while including Sundays and holidays. Periods during which it is impossible to load and stow the goods on board the ship for reasons within the sphere of risks to be borne by the carrier shall not be included in the computation.

Section 531

Loading and stowing goods

(1) Unless otherwise required under the given circumstances or under customary standards, the shipper shall be responsible for loading and stowing the goods. The carrier's responsibility for ensuring the seaworthiness of the ship loaded with the goods shall remain unaffected.

(2) The carrier shall not be authorised to reload the goods.

Section 532

Termination by the shipper

- (1) The shipper may terminate the voyage charter contract at any time.
- (2) Should the shipper terminate the contract, then the carrier, insofar as it is asserting a claim pursuant to section 489 (2) first sentence number 1, may demand any demurrage that may have accrued.

Section 533

Partial carriage

- (1) The shipper shall be entitled to demand at any time that the carrier carry only a part of the goods. If the shipper exercises this right, the carrier shall be entitled to the full freight, to any demurrage that may have accrued, as well as to compensation for any expenditures incurred because of the incompleteness of the consignment. If the voyage charter contract entitles the carrier to use the same ship to carry other goods in place of the cargo units that have not been loaded and stowed on board, and if the carrier exercises said right, then the freight for the carriage of these other goods shall be deducted from the full freight. Insofar as the carrier is deprived of security for the full freight due to the incompleteness of the consignment, it may demand that other security be provided. If the reasons for which the complete cargo is not carried are within the sphere of risks to be borne by the carrier, then the carrier shall be entitled to a claim pursuant to the second through fourth sentences only insofar as goods are in fact being carried.
- (2) If the shipper fails to load and stow all or part of the goods within the loading time plus any agreed laytime on demurrage, or – in cases in which the shipper is not responsible for loading and stowing the goods – if all or part of the goods are not handed over for carriage within this time, then the carrier may set a reasonable deadline for the shipper in which to load and stow the goods, or to hand them over for carriage. If by the expiry of the deadline, only a part of the goods has been loaded and stowed, or handed over for carriage, the carrier may carry the cargo units already loaded and stowed or handed over, and may assert the claims pursuant to subsection (1) second through fourth sentences. Section 490 subsection (4) shall apply *mutatis mutandis*.

Section 534

Termination by the carrier

- (1) If the shipper fails to load and stow any goods whatsoever within the loading time plus any agreed laytime on demurrage, or – in instances in which the shipper is not responsible for loading and stowing the goods – if no goods are handed over for carriage within this time, then the carrier may terminate the contract pursuant to section 490 and may assert the claims pursuant to section 489 (2) in conjunction with section 532 (2).
- (2) The carrier may terminate the contract already prior to expiry of the loading time plus any agreed laytime on demurrage in accordance with the stipulations of section 490 if it is obvious that the goods will not be loaded and stowed or handed over for carriage.

Section 535

Discharge from the ship

- (1) The provisions of sections 528 through 531 governing the port of loading and loading wharf, the notice of readiness for loading, the loading time, and the loading and stowing of goods on board are to be applied *mutatis mutandis* to the port of discharge and discharging wharf, to the notice of readiness for discharge, to the discharging time, and to the discharge of goods from the ship. However, notwithstanding the provisions under section 530 (3) second sentence, the consignee shall owe demurrage for any exceedance of the discharging time, even if, upon delivery of the goods, the consignee was not informed of the amount owed.
- (2) If the consignee is not known to the carrier, then the notice of readiness for discharge must be given by public notice in the form customary for the location where the goods are to be discharged from the ship.

Subchapter 2 **Contracts for the carriage of passengers and their luggage**

Section 536 **Scope of application**

(1) If, in the course of the carriage of passengers and their luggage by sea, damages arise from the death of or personal injury to a passenger, or from the loss of, physical damage to or delayed re-delivery of luggage, then the carrier and the actual carrier shall be liable pursuant to the provisions of the present Subchapter. The right to assert a limitation of liability pursuant to sections 611 through 617 or sections 4 through 5m of the Inland Waterways Act (*Binnenschiffahrtsgesetz*) shall remain unaffected.

(2) The stipulations set out in the present Subchapter shall not apply insofar as the following provisions govern:

1. Self-executing provisions of the European Union as amended, specifically Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents (OJ L 131 of 28 May 2009, p. 24), or
2. Self-executing provisions in international instruments.

Furthermore, the liability-related provisions in the present Subchapter shall not apply if the damage is caused by a nuclear incident originating in a nuclear facility and the operator of said facility is liable for such damage pursuant to the regulations of the Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy in the version promulgated on 5 February 1976 (Federal Law Gazette (*Bundesgesetzblatt*) 1976 II p. 310, citation on p. 311) and the Protocol of 16 November 1982 (Federal Law Gazette (*Bundesgesetzblatt*) 1985 II p. 690) or of the Atomic Energy Act (*Atomgesetz*).

Section 537 **Definitions**

The following definitions shall apply for the terms used in the present Subchapter:

1. “Carrier” means a person by whom a contract of carriage by sea of a passenger (contract for the carriage of passengers) has been concluded;
2. “Passenger” means:
 - a) A person carried under a contract for the carriage of passengers; or
 - b) A person who, with the consent of the carrier, is accompanying a vehicle or live animals that are being carried under a contract for the carriage of goods by sea;
3. “Luggage” means any article being carried under a contract for the carriage of passengers, with the exception of live animals;
4. “Cabin luggage” means the luggage that the passenger has in his cabin or that is otherwise in his possession; “cabin luggage” shall include luggage that the passenger has in or on his vehicle;
5. “Shipping incident” means a shipwreck, the capsizing, collision, or stranding of the ship, an explosion or fire in the ship, or a defect in the ship;
6. “Defect in the ship” means any malfunction, failure, or non-compliance with applicable safety regulations in respect of any part of the ship or its equipment when used for any of the following:
 - a) Escape, evacuation, embarkation or disembarkation of passengers;

- b) The propulsion, steering, safe navigation, mooring or anchoring, arriving at or leaving berth or anchorage, or damage control after flooding; or
- c) The launching of life-saving appliances.

Section 538

Liability of the carrier for personal injuries

(1) The carrier shall be liable for the damage suffered as a result of the death of or personal injury to a passenger if the incident that caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier. If the incident causing the damage was a shipping incident, the carrier's fault or neglect shall be presumed.

(2) In derogation from subsection (1), the carrier shall be liable, even if the incident occurred without the fault or neglect of the carrier, for the damage suffered as a result of the death of or personal injury to a passenger if the incident that caused the damage so suffered occurred in the course of the carriage and insofar as the damage is not in excess of 250,000 units of account. However, the carrier shall be released from such liability if:

- 1. The incident occurred due to acts of public enemies, an act of war, a civil war, civil unrest, or an exceptional and unavoidable natural disaster that was impossible to avert; or
- 2. The incident's sole cause was an act or omission by a third party, done with the intention of causing the incident.

(3) The term "carriage" as used in subsections (1) and (2) covers the following:

- 1. The period in which the passenger is on board the ship, including the period in which he is embarking or disembarking; and
- 2. The period in which the passenger is transported by water from land to the ship or vice versa, insofar as the costs of this transport are included in the fare, or insofar as the vessel used for this auxiliary transport has been put at the disposal of the passenger by the carrier.

The term does not cover the period which the passenger spends in a marine terminal or station, on a quay or in any other port installation.

Section 539

Liability of the carrier for physical damage to luggage and damages resulting from delays in the re-delivery of luggage

(1) The carrier shall be liable for the damage resulting from the loss of cabin luggage or luggage, or physical damage to same, if the incident that caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier. If the loss of or physical damage to cabin luggage is caused by a shipping incident, or if other luggage is lost or physically damaged, then the carrier's fault or neglect shall be presumed.

(2) The liability of the carrier pursuant to subsection (1) shall also extend to damages resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried. However, such liability shall be ruled out if the delay in re-delivery of the luggage is attributable to labour disputes.

(3) Notwithstanding the provisions of subsections (1) and (2), the carrier shall not be liable for damages resulting from the loss of, or physical damage to, monies, negotiable securities, gold, silver, gemstones, jewellery, works of art, or other valuables, or for damages resulting from the delayed re-delivery of such valuables, unless they had been deposited with the carrier for safe-keeping.

(4) The term "carriage" in the sense as used in subsection (1) shall cover the following periods:

1. For cabin luggage, excepting luggage that the passenger has in or on the vehicle:
 - a) The period during which the cabin luggage is on board the ship, including the period in which the cabin luggage is transported onto or off the ship;
 - b) The period during which the cabin luggage is transported by water from land to the ship or vice-versa, insofar as the cost of such transport is included in the fare or if the vessel used for this auxiliary transport has been put at the disposal of the passenger by the carrier; and
 - c) The period which the passenger spends in a marine terminal or station or on a quay or in or on any other port installation, insofar as the cabin luggage has been taken over by the carrier or its servants or agents, and has not yet been returned to the passenger;
2. For luggage other than the cabin luggage referred to in number 1: the period between the luggage's having been taken over by the carrier on shore or on board and the time of its re-delivery.

Section 540

Responsibility for other persons

The carrier must assume responsibility for the fault or neglect of its servants and that of the ship's company to the same extent as if the fault or neglect in question were its own, provided that its servants and the ship's company were acting within the scope of their employment. This shall likewise apply to any fault or neglect on the part of any other person of whose services the carrier avails itself in performing the carriage.

Section 541

Limit of liability for personal injury

- (1) The liability of the carrier for the death of or physical injury to a passenger shall in no case exceed 400,000 units of account per passenger per loss event. Where damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.
- (2) In derogation from subsection (1), the liability of the carrier shall be limited to the amount of 250,000 units of account per passenger per loss event, if the death or physical injury was due to any of the circumstances set out below:

1. War, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or hostile acts by or against a belligerent power;
2. Seizure, attachment, arrest, restraint of disposition, or detainment, as well as the consequences thereof, or any attempt thereat;
3. Derelict mines, torpedoes, bombs or other derelict weapons of war;
4. Attacks carried out by terrorists or by persons acting on malice or for political motives, as well as any action taken to prevent or counter such attacks;
5. Forfeiture and expropriation.

(3) If more than one passenger loses his life or suffers physical injury in a situation covered by subsection (2), then the liability amount of 250,000 units of account per passenger per loss event set out in subsection (2) shall be replaced by a liability amount of 340 million units of account per ship per loss event, where the latter amount is lower and can be distributed pro-rata amongst the injured parties, in proportion to their relative claims, as a single, non-recurring payment or as several partial payments.

Section 542

Limit of liability for physical damage to luggage and damages due to delays in the re-delivery of luggage

(1) Unless otherwise provided for in subsection (2), the liability of the carrier for the loss of, physical damage to, or delayed re-delivery of cabin luggage shall be limited to the amount of 2,250 units of account per passenger, per carriage.

(2) The liability of the carrier for loss of, physical damage to or delayed re-delivery of vehicles, including the luggage in or on the vehicle, shall be limited to the amount of 12,700 units of account per vehicle, per carriage.

(3) The liability of the carrier for loss of, physical damage to or delayed re-delivery of all other luggage items besides those named in subsections (1) and (2) shall be limited to the amount of 3,375 units of account per passenger, per carriage.

(4) Unless valuables deposited with the carrier for safe-keeping are involved, the carrier and the passenger may agree that the carrier will be released from providing compensation for a portion of the damage. However, this portion may not exceed the amount of 330 units of account insofar as physical damage to a vehicle is involved, or 149 units of account insofar as the loss of, physical damage to or delayed re-delivery of other luggage items is involved.

(5) Notwithstanding the provisions of subsections (1) through (4), the carrier must compensate passengers with reduced mobility in the event of loss of, or damage to, mobility equipment or other specific equipment, by paying the replacement value of the equipment concerned or, where applicable, the costs relating to repairs.

Section 543

Interest and costs of court proceedings

Any interest charges and costs of court proceedings must be reimbursed above and beyond the limits of liability set out in sections 538, 541 and 54

Section 544

Unit of account

The “unit of account” referred to in sections 538, 541 and 542 is the Special Drawing Right as defined by the International Monetary Fund. The relevant amount shall be converted into euros based on the exchange rate between the euro and the Special Drawing Right on the date of the judgment or the date agreed upon by the parties. The exchange rate between the euro and the Special Drawing Right shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions.

Section 545

Conduct barring limitation of liability

The carrier shall not be entitled to the benefit of the limits of liability set out in sections 541 and 542 and provided for in the contract for the carriage of passengers and their luggage insofar as the damage suffered resulted from an act or omission of the carrier, done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Section 546

Actual carrier

(1) If the whole or a part of the carriage is performed by a third party who is not the carrier, that third party (actual carrier) shall be liable, just as though it were the carrier, for the damage caused by the death of or physical injury to a passenger, or by the loss of, physical damage to or delayed re-delivery of passenger luggage occurring in the course of the carriage as performed by the actual carrier. Any contractual arrangements whereby the carrier expands its own liability shall affect the actual carrier only if the actual carrier has agreed to them in writing.

(2) The actual carrier may lodge any and all objections and defences to which the carrier is entitled under the contract for the carriage of passengers and their luggage.

(3) The carrier and the actual carrier shall be liable jointly and severally.

Section 547

Liability of the carrier's servants and of the ship's company

(1) If a claim is asserted against one of the carrier's or actual carrier's servants for the death of or personal injury to a passenger, or for the loss of, physical damage to or delayed re-delivery of passenger luggage, such servant as well shall be entitled to avail himself of the defences and limitations of liability applicable to the carrier or actual carrier, provided the servant was acting within the scope of his employment. The same shall apply if such a claim is asserted against a member of the ship's company.

(2) Recourse to the limitations of liability pursuant to subsection (1) shall be ruled out if the liable party has acted intentionally or recklessly and with knowledge that such damage would probably result.

(3) If the carrier or actual carrier shares joint responsibility for causing the damage with one of the persons mentioned in subsection (1), then said parties shall be liable jointly and severally.

Section 548

Concurrent claims

Claims in respect of the death of or personal injury to a passenger, or for the loss of, physical damage to, or delayed re-delivery of luggage may be asserted against the carrier or actual carrier only on the basis of the provisions of the present Subchapter.

Section 549

Notice of damage

(1) Should a passenger fail to notify the carrier in due time that the passenger's luggage has been physically damaged or lost, he shall be presumed to have received the luggage undamaged. The notice need not be given, however, if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

(2) The notice shall be deemed timely if given within the following deadlines:

1. In the case of externally apparent physical damage to cabin luggage: the time of disembarkation;

2. In the case of externally apparent physical damage to luggage other than cabin luggage: the time of the luggage's re-delivery to the passenger;

3. In the case of physical damage to luggage that is not externally apparent, or for lost luggage: fifteen (15) days after disembarkation or re-delivery of the luggage, or after the date on which the luggage should have been re-delivered to the passenger.

(3) Notice of physical damage must be given in text form (a readable statement that is permanently valid without a signature having been applied). Timely dispatch of the notice shall suffice for purposes of compliance with the respective deadline.

Section 550

Lapse of claims to compensation of damages

A claim for compensation of damages in respect of the death of or personal injury to a passenger, or in respect of the loss of, physical damage to, or delayed re-delivery of luggage shall lapse unless it is asserted before a court of law within one of the periods set out below:

1. Three (3) years from the date on which the claimant becomes aware of the death or personal injury, or of the loss of, physical damage to, or delayed re-delivery of luggage, or from the date on which the claimant should have become aware under normal circumstances; or

2. Five (5) years from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

Section 551
Divergent agreements

Unless otherwise provided for in section 542 (4), any agreement which rules out or limits liability for the death of or personal injury to a passenger, or for the loss of, physical damage to or delayed re-delivery of passenger luggage, shall be invalid insofar as it was made prior to the event that caused the death of or personal injury to a passenger or the loss of, physical damage to or delayed re-delivery of passenger luggage.

Section 552
Carrier's lien

- (1) To secure its claim to the fare, the carrier shall have a lien on the passenger's luggage.
(2) The lien shall continue in force only as long as the luggage is retained or deposited.

Chapter 3
Charter contracts for ships

Subchapter 1
Chartering a ship

Section 553
Bareboat charter contract

- (1) A bareboat charter contract obliges the owner to let a certain sea-going ship without company to the charterer, and to allow the charterer the use of this ship during the charter period.
(2) The charterer shall be obliged to pay the charter rate agreed. Unless otherwise agreed, the charter rate is to be paid in advance on a fortnightly basis.
(3) The provisions of the present Subchapter shall apply insofar as the charterer concludes the charter party for the purposes of operating the ship to pursue marine navigation as a gainful economic activity. If the charterer does not carry on a trade in the sense as defined by section 1 (2), and if the charterer's business name has not been entered in the Commercial Register pursuant to section 2, then the provisions set out in Chapter 1 of Book 4 shall apply as a subsidiary source of law to the bareboat charter contract; this shall not apply to the provisions of sections 348 through 350, however.

Section 554
Turning over and returning the ship; maintenance

- (1) The owner must turn the ship over to the charterer at the time and location agreed, in a condition suitable for the contractually agreed use.
(2) For the duration of the charter period, the charterer must maintain the ship in a condition suitable for the contractually agreed use. Upon the charter relationship ending, the charterer must return the ship in the same condition, with due account being taken of the wear and tear resulting from use in accordance with the terms of contract.

Section 555
Safeguarding the owner's rights

The charterer must safeguard the rights of the owner vis-à-vis third parties.

Section 556
Termination

A charter relationship entered into for an indefinite period of time may be terminated at the latest effective midnight of any given Saturday by giving one week's notice by the first workday of the preceding week. If the charter contract calls for charter rate to be paid monthly or at longer intervals, then it shall be possible to terminate the charter party in

accordance with normal procedure giving notice of three months to the end of a calendar quarter.

Subchapter 2 Time charter

Section 557

Time charter contract

(1) A time charter contract obliges the owner to let a certain sea-going ship and its company to the time charterer, for its use, for a certain period of time, and to carry goods or passengers on this ship or to render other services as may have been agreed.

(2) The time charterer is under obligation to pay the hire agreed.

(3) The provisions of the present Subchapter shall apply if the time charterer concludes the time charter contract for purposes of operating the ship to pursue marine navigation as a gainful economic activity. If the time charterer does not carry on a trade in the sense as defined by section 1 (2), and if the time charterer's business name has not been entered in the Commercial Register pursuant to section 2, then the provisions set out in Chapter 1 of Book 4 shall apply as a subsidiary source of law to the time charter contract; this shall not apply to the provisions under sections 348 through 350, however.

Section 558

Time charter party

Each of the parties to the time charter agreement may demand that the agreement be recorded in writing (time charter party).

Section 559

Provision of the ship

(1) The ship must be put at the disposal of the time charterer at the time and location agreed, in a condition suitable for the contractually agreed use.

(2) If it has been agreed that the ship is to be made available at a certain date or within a certain period, then the time charterer may rescind the charter contract, without setting any deadline, if the charter contract is not complied with, or if it becomes obvious that it will not be complied with.

Section 560

Maintenance of the ship in contractually agreed condition

For the duration of the time charter contract, the owner must maintain the ship in a condition suitable for the contractually agreed use. In particular, the owner must ensure that the ship is seaworthy and, insofar as the ship is to be used to carry goods, that it is also in cargoworthy condition.

Section 561

Use of the ship

(1) The time charterer shall determine the use of the ship. Insofar as the time charterer instructs the owner to navigate to a specific harbour or berth, it shall be incumbent on the time charterer to exercise due care in choosing a safe harbour or berth.

(2) The owner shall be responsible for steering and otherwise operating the ship.

(3) The time charterer shall have the right to charter out the ship to third parties.

Section 562

Notification obligations

The owner and the time charterer must notify each other of any and all significant circumstances concerning the ship and the voyage.

Section 563

Loading and discharge of goods

- (1) If the ship is to be used to carry goods, the time charterer shall be responsible for loading and stowing the goods on board and also for discharging them from the ship.
- (2) The owner must ensure that loading and stowing the goods on board the ship does not impair its seaworthiness.

Section 564

Costs of operating the ship

- (1) The owner is to bear the fixed cost of operating the ship, specifically the costs of its company, equipment, maintenance, and insurance.
- (2) The time charterer is to bear the variable cost of operating the ship, specifically port charges, pilotage charges, tug assistance charges, and the premiums for insurance of the ship providing a greater scope of cover. Furthermore, the time charterer is to procure the fuel required for operating the ship; such fuel must be of commercial quality.

Section 565

Hire

- (1) Absent an agreement otherwise, the hire is to be paid in advance on a fortnightly basis.
- (2) The obligation to pay the hire shall not apply to any periods in which the ship is unavailable to the time charterer for the contractually agreed use due to deficiencies or other circumstances within the sphere of risks to be borne by the owner. If the ship cannot be used to the full extent contractually agreed, a reasonably reduced hire shall be payable.

Section 566

Owner's lien

- (1) To secure its amounts receivable under the time charter contract, the owner shall have a lien on the property on board the ship, including the fuel, insofar as such property is owned by the time charterer. The provisions governing the acquisition of ownership in good faith under Sections 932, 934 and 935 of the Civil Code (*Bürgerliches Gesetzbuch*, BGB) shall not apply.
- (2) To further secure its amounts receivable under the time charter contract, the owner shall also have a lien on the time charterer's amounts receivable under the freight and sub-time charter contracts which the latter has concluded and intends to fulfil using the ship. Once the debtor of an amount receivable owed to the time charterer becomes aware of the owner's lien, the debtor may make payment only to the owner. However, the debtor shall be entitled to deposit the amount in question until such time as the charterer notifies it of the lien.
- (3) Notwithstanding the provisions under subsections (1) and (2), the owner shall have no lien to secure any future claims to compensation, nor shall the owner have any lien to secure any hire receivable but not yet due for payment.

Section 567

Breach of duties

Unless stipulated otherwise in the present Subchapter, the legal consequences of a party's breach of its duties under a time charter contract shall be determined by the general provisions governing obligations made in the Civil Code (*Bürgerliches Gesetzbuch*, BGB).

Section 568

Right of retention

The owner may refuse performance of its obligations, including the loading and stowing of goods on board and the issuance of bills of lading, for as long as the charterer is in default with regard to a hire amount that is due and payable.

Section 569

Return of the ship

- (1) Upon the contractual relationship ending, the time charterer must return the ship at the location agreed.

(2) If the contractual relationship ends due to its being terminated without notice, then, in derogation from subsection (1), the time charterer must return the ship at whatever location it happens to be once the termination takes effect. However, the party responsible, by its fault or neglect, for causing the agreement to be terminated without notice must compensate the other party for any damages resulting from premature termination of the contractual relationship.

Chapter 4 Ship's emergencies

Subchapter 1 Collision of ship

Section 570 Obligation to compensate for damages

Where a collision occurs between sea-going ships, the *Reeder* of the ship causing the collision shall be liable for the damage caused to the other ship and to the persons and property located on board on either or both of the ships. However, such obligation to compensate for damages shall arise only if fault or neglect is attributable to the *Reeder* of the ship causing the collision, or to one of the persons referred to in section 480.

Section 571 Contributory fault

(1) If the *Reeder* of several ships involved in a collision are obligated to compensate for damages, the scope of compensation that a given *Reeder* must pay shall be determined by the degree of the fault or neglect of that *Reeder* in proportion to the fault or neglect of the other *Reeder*. If it is not possible to determine the degree of the respective faults or neglects, then the liability of all *Reeder* concerned shall be apportioned equally.

(2) In derogation from subsection (1), the *Reeder* of several ships involved in a collision shall be liable jointly and severally for damages caused by death of or personal injury to a person on board. In their relation *inter se*, the scope of the compensation to be paid by each *Reeder* shall be determined in accordance with subsection (1).

Section 572 Damage without collision

If a ship, either by the execution or non-execution of a manoeuvre, or by the non-observance of a navigation rule, causes damage to another ship, or to the persons or property on board that ship, without a collision taking place, then sections 570 and 571 shall be applied *mutatis mutandis*.

Section 573 Involvement of an inland waterway vessel

The provisions of the present Subchapter are to be applied *mutatis mutandis* if an inland waterway vessel is involved in the accident.

Subchapter 2 Salvage

Section 574 Duties of the salvor and of other persons

(1) A "salvor" shall be defined as a party that goes to the aid of the following ships or other property:

1. A sea-going ship or inland waterway vessel or other property that is in danger at sea;
2. A sea-going ship that is in distress in inland waters; or

3. An inland waterway vessel or other property that is in danger in inland waters, insofar as the assistance is provided from a sea-going ship.

(2) The term “ship” as used in subsection (1) shall also cover floating equipment or a floating structure. The term “property” as used in subsection (1) shall also cover a jeopardised claim to freight. However, the following shall not be deemed a ship or other property within the meaning of subsection (1):

1. An object attached permanently and intentionally to the shoreline;

2. A fixed or floating platform, or a mobile offshore drilling rig, such platform or rig being engaged on site in the exploration, exploitation or production of sea-bed mineral resources.

(3) The salvor shall owe the following duties to the owner of the ship or other property to which it renders assistance: to carry out the operations with due care; to seek assistance from other salvors whenever circumstances reasonably require; and to accept the intervention of other salvors when reasonably requested to do so by the skipper, master or owner of the ship in distress, or by the owner of the other property in danger.

(4) The owner and the skipper or master of a ship in distress, as well as the owner of the other property in danger shall owe a duty to the salvor to co-operate in every regard with the salvor during the course of the salvage measures. Once the ship or other asset has been brought to a place of safety, the persons listed in the first sentence shall be obliged to accept re-delivery of the ship or of the other property upon being reasonably requested to do so by the salvor.

Section 575

Prevention or minimisation of damages to the environment

(1) The salvor shall owe a duty to the owner of the ship or of the other property in danger which it is assisting to exercise due care in performing the salvage measures so as to prevent or minimise damage to the environment. The owner and the skipper or master of the ship in distress, as well as the owner of the other property in danger, in turn shall owe the same duty to the salvor. Any arrangement made in derogation herefrom shall be null and void.

(2) The term “damage to the environment” shall be defined as substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion, or similar major incidents.

Section 576

Right to a reward

(1) Insofar as salvage measures prove successful, the salvor shall be entitled to receive payment of a salvage reward. This claim shall arise notwithstanding that the salvaged ship and the ship undertaking the salvage measures belong to the same owner.

(2) The salvage reward shall also comprise reimbursement of expenses incurred in the salvage measure. The following shall not be included in the salvage reward: any costs and fees charged by government authorities; any customs duties and other duties payable; the costs of warehousing, preserving, appraising, and selling the salvaged property (costs of salvage).

(3) The owner of the salvaged ship as well as the owner of the other salvaged property shall be obliged to pay the salvage reward and the costs of salvage, the pro-rata contribution of each being determined by the value of the ship in proportion to that of the other property.

Section 577

Amount of the salvage reward

(1) Unless the parties already fixed the amount of the salvage reward beforehand, they shall set it at a level that encourages future salvage measures. In so doing, they must allow for the following criteria, without regard to the order in which they are presented below:

1. The salvaged value of the ship and of any other salvaged assets;
2. The skill and efforts of the salvor in preventing or minimising damage to the environment (Section 575 (2));
3. The measure of success obtained by the salvor;
4. The nature and degree of the danger;
5. The skill and efforts of the salvor in salvaging the ship, other property and human life;
6. The time, expenses, and losses incurred by the salvor;
7. The potential liability and other risks to which the salvor or its equipment was exposed;
8. The promptness of the services rendered;
9. The availability and deployment of vessels or other equipment intended for the salvage measures;
10. The state of readiness and efficiency of the salvor's equipment along with its value.

(2) The salvage reward, exclusive of any interest, costs of salvage, or recoverable legal costs, shall not exceed the salvaged value of the vessel and of the other salvaged property.

Section 578 Special compensation

(1) If the salvor has carried out salvage measures for a ship that poses a danger to the environment, either by itself or by virtue of its cargo, then the salvor shall be entitled to demand special compensation from the owner of that ship in excess of the salvage reward to which the salvor is entitled. The claim to such special compensation shall also arise notwithstanding that the salvaged ship and the ship undertaking the salvage measures belong to the same owner.

(2) The amount of the special compensation shall correspond to the expenses incurred by the salvor. The term "expenses" as used in the first sentence shall cover all expenditures reasonably incurred by the salvor in the salvage measures as well as a fair rate for any equipment and personnel verifiably and reasonably deployed in the salvage measures. In determining the reasonableness of the amount to be assessed for equipment and personnel, the criteria listed in section 577 (1) second sentence number 8 through 10 must be considered.

(3) Insofar as the salvor's salvage measures have prevented or minimised damage to the environment (section 575 (2)), the special compensation payable pursuant to subsection (2) may be increased by up to 30 percent. Notwithstanding the first sentence, the special compensation payable may be increased by up to 100 percent if this is deemed fair and equitable in consideration of the criteria listed in section 577 (1) second sentence.

Section 579 Exclusion of a claim to remuneration

(1) The salvor may not claim any remuneration for salvage measures under the present Subchapter if the measures taken do not extend above and beyond what could be reasonably considered to be the due and proper fulfilment of a contract concluded prior to occurrence of the peril.

(2) Furthermore, the salvor may not claim any remuneration under the present Subchapter if it performed the salvage measures notwithstanding the express and reasonable prohibition of the owner, skipper or master of the ship, or of the owner of some other property in danger that is not and was not on board the ship.

Section 580
Salvor's misconduct

- (1) A salvor may be deprived of all or part of the salvage reward to the extent that the salvage measures were rendered necessary or more difficult due to fault or neglect on the part of the salvor, or if the salvor has engaged in fraud or otherwise acted in bad faith.
- (2) A salvor may be deprived of all or part of the special compensation if one of the reasons set out in subsection (1) is given, or if the salvor was negligent and thereby failed to prevent or minimise damage to the environment (section 575 (2)).

Section 581
Claim to apportionment

- (1) If a ship or its cargo is salvaged, in whole or in part, by another ship, then the salvage reward or special compensation shall be apportioned between the following: the ship's owner or the *Reeder*; the skipper or master; and the other persons in the service of the other ship; in the process, the ship's owner or the *Reeder* must be compensated for the damages the ship has suffered and must be reimbursed for expenses incurred, while the rest is to be apportioned such that the ship's owner or the *Reeder* is paid two thirds, while the skipper or master and the other persons in the service of the ship each receive one sixth.
- (2) The amount payable to the ship's company, not including the skipper or master, shall be apportioned to the members thereof while making special allowance for each member's personal skills and effort made. The skipper or master shall distribute the amount based on a disbursement scheme. This shall set out the portion to which each party is entitled. The ship's company is to be informed of the disbursement scheme prior to the end of the voyage.
- (3) Any agreements diverging from the provisions of subsections (1) and (2) to the detriment of the ship's skipper or master or of the other persons in the service of the ship shall be null and void
- (4) Subsections (1) through (3) shall be not applicable if the salvage measures are undertaken from a naval rescue and salvage ship or a salvage tug.

Section 582
Plurality of salvors

- (1) If several salvors cooperate in the performance of salvage measures, then each of the salvors may demand only a share of the salvage reward. Section 577 (1) shall be applied *mutatis mutandis* in determining the salvors' pro-rata shares in the salvage reward; section 581 shall remain unaffected.
- (2) In derogation from subsection (1), a salvor may demand the full amount of a salvage reward if the salvor accepted the intervention of the other salvors at the request of the owner of the ship in distress or other property in danger, and if said request later proves to have been unreasonable.

Section 583
Saving human life

- (1) No remuneration shall be due from persons whose lives have been saved, neither as a salvage reward nor as special compensation.
- (2) In derogation from subsection (1), any person who has taken action to save human life during salvage measures may demand a fair share of the salvage reward payable to the salvor pursuant to the present Subchapter in return for the salvor's salvaging of the ship or other property, or for his prevention or mitigation of damage to the environment (section 575 (2)). Where the salvor is not entitled to any salvage reward, or only a reduced amount, due to the reasons set out in section 580, thereby reducing the amount recoverable by a party claiming a fair share of the salvage reward, then that person may recover the lost portion of his fair share of the reward directly from the owners of the salvaged ship and of the other salvaged property; section 576 (3) shall apply *mutatis mutandis*.

Section 584

Conclusion of a salvage contract and retroactive review of its content by a court

(1) Both the owner and the skipper/master of a ship in distress shall have the authority to conclude contracts for salvage measures on behalf of the owners of property on board the ship. Moreover, the skipper or master of said ship shall have the authority to conclude such contracts on behalf of the owner of the ship.

(2) The salvage contract or any terms thereof may be annulled or modified by a court ruling in response to a petition, provided one of the following applies:

1. The contract was entered into as a result of undue influence or under the influence of danger, and the contract's terms are inequitable; or
2. The payment provided under the contract is excessively large or small in view of the services actually rendered.

Section 585

Lien, right of retention

(1) Pursuant to section 596 (1) number 4, the creditor of a claim to a salvage reward, to special compensation, or to reimbursement of the costs of salvage shall enjoy, for purposes of its claim, the same rights as a maritime lienor of the salvaged ship.

(2) The creditor shall also have a lien on other salvaged assets in order to secure its claim to a salvage reward or to reimbursement of the costs of salvage; if the creditor is the sole possessor of the property, it shall also have a right of retention.

(3) The creditor shall be barred from enforcing the lien or exercising the right of retention granted pursuant to subsections (1) or (2) in any of the following situations:

1. When satisfactory security for the creditor's claim, including interest and costs, has been duly tendered or provided;
2. In cases in which the salvaged ship or other salvaged property is owned by a State or, in the case of a ship, in cases in which it is operated by a State, and if the ship or other property serves non-commercial purposes and, at the time of salvage measures, is entitled to sovereign immunity under generally recognized principles of international law;
3. If the salvaged cargo is a humanitarian cargo donated by a State, provided such State has agreed to defray the cost of salvage services for such cargo.

Section 586

Ranking order of several liens

(1) Liens on property salvaged pursuant to section 585 (2) shall take priority over all other liens affecting the property, even if such liens may have accrued earlier.

(2) If several liens pursuant to section 585 (2) encumber a property, then a lien for a claim accruing later shall take priority over a lien for a claim accruing earlier; any liens for claims accruing simultaneously shall rank *pari passu* as between themselves; section 603 (3) shall apply *mutatis mutandis*. The same rule for determining the order of priority shall apply when the same event gives rise to both a lien pursuant to section 585 (2) as well as to a lien on a claim for contribution in general average pursuant to section 594 (1).

(3) Liens on any property salvaged pursuant to section 585 (2) shall be extinguished one (1) year after the corresponding claim arose; section 600 (2) shall apply *mutatis mutandis*.

(4) The creditor of a lien pursuant to section 585 (2) shall be satisfied from the salvaged property pursuant to the regulations governing compulsory enforcement. Insofar as the corresponding property is yet to be surrendered, legal action is to be directed against the skipper or master; any ruling handed down against the skipper or master shall also take effect against the owner.

Section 587

Provision of security

(1) The salvor may demand that the debtor provide satisfactory security for the salvor's claim to a salvage reward or to special compensation, including interest and costs. The first sentence shall not apply, however, if the salvage measures were performed for a ship that is owned or operated by a State, that serves non-commercial purposes and that, at the time of the salvage measures, enjoys sovereign immunity under generally recognized principles of international law.

(2) Without prejudice to subsection (1), the owner of the salvaged ship shall use its best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them, including interest and costs, before the cargo is released.

(3) Unless the salvor gives its express consent, the salvaged ship and other property may not be removed from the port or place at which they first arrive upon completion of the salvage measures until such time as the salvor's claims have been satisfied or until satisfactory security has been provided for the salvor's claim.

(4) If the skipper or master delivers salvaged cargo to be removed in contravention of subsection (3), he shall be liable for the damages that he has culpably caused the salvor. This shall also apply if the skipper acted on the instructions of the ship's owner, or if the master acted on the instructions of the *Reeder*.

Subchapter 3 General average

Section 588

Preservation from common peril

(1) If the ship, the fuel, the cargo or several of these items are intentionally damaged or voluntarily sacrificed upon the master's orders in order to preserve the ship, its company, and cargo from common peril, or if any expenditures are incurred to this end upon the master's orders (general average), the resulting damages and expenditures shall be borne jointly by the parties involved.

(2) A "party to the adventure" shall be defined as a party who, at the time of the general average act, is the owner of the ship or owner of the fuel, or who bears the risk of loss with regard to a cargo unit or freight claim associated with the shipment.

Section 589

Fault or neglect of a party to the adventure or of a third party

(1) The regulations on the general average shall remain applicable even in a case where the imminent peril is caused due to the fault or neglect of a party to the adventure or of a third party. However, the party to the adventure culpable of such fault or neglect may not demand any average in respect of the damage it has suffered.

(2) If the imminent peril occurred due to the fault or neglect of a party to the adventure, that party shall be obliged to compensate the contributing interests for the damages they have suffered as a result of having to jointly bear the damages and having to jointly incur the expenditures for saving the ship from common danger.

Section 590

Assessment of the average

(1) The average for the voluntary sacrifice of the ship, its accessories, the fuel, and the cargo units forming part of the cargo shall be assessed based on the current market value that these property items would have had at termination of the voyage.

(2) The average for the physical damage of the property items set out in subsection (1) shall be assessed based on the difference between the current market value of the property at termination of the voyage, and the current market value the property would have had if sold in undamaged condition at termination of the voyage. If property has been repaired following the general average act, the presumption shall be that the costs expended for the repair of the property correspond to their depreciation.

(3) The average for the loss of a claim to freight shall correspond to the amount that is not owed to the carrier as a result of the general average.

(4) If the property voluntarily sacrificed or damaged was the subject of a sale and purchase agreement immediately prior to commencement of the voyage, the presumption shall be that the purchase price itemised in the seller's invoice corresponds to that property's current market value.

Section 591

Contribution in general average

(1) All parties to the adventure, excluding the ship's company and the passengers, must contribute to the average.

(2) The contribution in general average shall correspond to the value of the property items that were subject to common danger. The value of the ship, of the fuel and of the cargo units forming part of the cargo shall be determined based on the current market value of said items at the termination of the voyage, plus any average payable for physical damage or voluntary sacrifice of property covered by the general average. The value of a claim to freight shall be determined based on the gross amount of freight owed at the termination of the voyage, plus any average payable for loss of the claim to freight due to measures taken in the general average act.

Section 592

General average disbursements

(1) The amount of the average that a party to the adventure may claim for the voluntary sacrifice or physical damage of any property attributable to said party pursuant to section 588 (2), as well as the amount of the contribution that a party to the adventure must pay, shall be determined based on the proportion between the entire average owed to all parties to the adventure on the one hand, and the total contributions owed by all parties to the adventure on the other. If a pro-rated depreciation determined pursuant to section 590 is higher than the share calculated in accordance with the first sentence, then the party to the adventure affected by the depreciation shall receive a general average disbursement equivalent to the difference. If a pro-rated depreciation determined pursuant to section 590 is lower than the share calculated in accordance with the first sentence, then the party to the adventure affected by the depreciation shall pay a contribution equivalent to the difference.

(2) However, each contributing interest shall be liable only up to the value of the salvaged property that is attributable to that contributing interest pursuant to section 588 (2).

Section 593

Rights of maritime lienors

Pursuant to section 596 (1) number 4, the parties entitled to general average disbursements shall have the rights of a maritime lienor of the ship in order to secure their claims to contribution in general average against the owner of the ship and against the creditor of the freight.

Section 594

Lien of the parties entitled to a general average disbursement; prohibition of delivery

(1) To secure their claims to a general average disbursement, the parties entitled to such disbursements shall have a lien on the fuel and cargo of the contributing interests.

(2) Said lien shall take priority over all other liens on such property items, even if they arose earlier. If a given property item is subject to several liens pursuant to subsection (1), or if the property is also subject to a lien pursuant to section 585 (2), then the lien for a claim arising later shall take priority over the lien for a claim arising earlier. Any liens for claims arising simultaneously shall rank *pari passu* as between themselves. Section 603 subsection (3) shall apply *mutatis mutandis*.

(3) Liens pursuant to subsection (1) shall be extinguished one (1) year from the time when the claim secured thereby arose; section 600 (2) shall apply *mutatis mutandis*.

(4) The *Reeder* shall exercise liens on behalf of the parties entitled to a general average disbursement. Section 368 and section 495 (4) shall be applied *mutatis mutandis* to the enforcement of liens on the cargo.

(5) The master shall be prohibited from delivering property encumbered by liens pursuant to subsection (1) before the corresponding contributions have been adjusted or secured. If, contrary to the first sentence, the master in fact delivers the property, he shall be liable for the damages that he caused, by his fault or neglect, to the parties entitled to a general average disbursement. This shall apply even if the master acted on the instructions of the *Reeder*.

Section 595

Settlement of the average

(1) Each party to the adventure shall have the right to initiate settlement of the average at the destination or, insofar as this is not reached, at the harbour where the voyage ends. If the fuel or cargo was damaged or sacrificed intentionally, the *Reeder* shall be obliged to promptly initiate settlement of the average at the location set out in the first sentence; any failure to do so shall make the *Reeder* liable to the parties to the adventure for the resulting damages.

(2) The average is to be settled by a licensed appraiser, or by an expert person separately appointed by the court (average adjuster).

(3) Each party to the adventure must provide the average adjuster with all documents in its possession that may be required to settle the average.

Chapter 5

Maritime lienor

Section 596

Secured claims

(1) Creditors of any of the following claims shall have the rights of a maritime lienor:

1. Wages due to the master and the other persons making up the ship's company in respect of their employment on the vessel;
2. Public charges such as vessel dues; port, canal and other waterway dues; and pilotage dues;
3. Claims to compensation of damages in respect of loss of life or personal injury, as well as for the loss of or physical damage to property, occurring in direct connection with the operation of the ship; however, those claims in respect of the loss of or physical damage to property shall be ruled out that are based on a contract or that could be derived from a contract;
4. Claims to a salvage reward, to special compensation, and to the costs of salvage; claims against the owner of the ship and against the creditor of the freight for contribution in general average; claims for wreck removal;
5. Claims of the social security authorities against the *Reeder*, including unemployment insurance claims.

(2) Subsection (1) number 3 shall not be applied to claims that are the result of the radioactive properties, or a combination of radioactive properties with toxic, explosive or other hazardous properties, of nuclear fuel or of radioactive product or waste.

Section 597

Lien held by maritime lienors

(1) To secure their claims, maritime lienors shall have a statutory lien on the ship. Said lien may be asserted against any party in possession of the ship.

(2) The ship shall be liable also for the statutory interest accruing to the claims, as well as for the costs of bringing an action to obtain satisfaction of the creditors from the ship.

Section 598

Object of the lien held by the maritime lienors

(1) The lien held by maritime lienors shall cover the ship's accessories, excepting those items forming part of the ship's accessories that did not become the property of the owner of the ship.

(2) The lien shall also cover any claim to compensation which the *Reeder* may have against a third party for loss of or physical damage to the ship. The same shall apply to the average to be disbursed for damages to the ship, assuming a general average is performed.

(3) The lien shall not extend to cover any claims to benefits under an insurance policy taken out for the ship by the *Reeder*.

Section 599

Lapse of the claim

If a claim secured by a lien held by a maritime lienor lapses, the associated lien shall lapse as well.

Section 600

Lapse by passage of time

(1) The lien held by a maritime lienor shall lapse one year after the associated claim has arisen.

(2) The lien shall not lapse should the creditor obtain the seizure of the ship due to the lien within the limitation period set out in subsection (1), provided that the ship is subsequently sold by way of compulsory enforcement before the seizure in favour of said creditor has been lifted. The same shall apply to the lien held by a creditor who accedes to the compulsory enforcement proceedings in order to realise its lien, and does so within the above-referenced limitation period.

(3) Any period during which a creditor is prevented by law from satisfying its claims out of the ship shall not be included in calculating the limitation period. Any suspension, extension, or re-commencement of the limitation period for other reasons shall be ruled out.

Section 601

Satisfaction of the maritime lienor

(1) The maritime lienor shall be satisfied out of the ship in accordance with the regulations governing compulsory enforcement.

(2) An action to obtain the toleration of compulsory enforcement may be brought against the owner of the ship and against its operator. Any ruling handed down against the operator shall also be effective against the owner.

(3) In favour of a maritime lienor, any party that has been entered as owner in the register of ships shall be deemed to be a ship's owner. This shall not affect the right of an owner not entered in the register of ships to assert those objections against the lien to which it is entitled.

Section 602

Precedence of the liens held by maritime lienors

Liens held by maritime lienors shall take priority over all other liens on the ship. They shall also take priority insofar as dutiable and taxable property is to serve as collateral for public charges pursuant to statutory regulations.

Section 603

General ranking of liens held by maritime lienors

(1) The liens held by maritime lienors shall rank amongst each other in the order in which the corresponding claims are listed in section 596.

(2) However, liens for the claims listed in section 596 (1) number 4 shall take priority over liens for any earlier claim on the part of any other maritime lienors.

(3) Any claims for contribution in general average shall be deemed to have accrued on the date on which the general average act was performed; claims to a salvage reward, to special compensation, and to compensation of the costs of salvage shall be deemed to have accrued on the date on which the salvage measures were terminated; claims for the removal of the wreck shall be deemed to have accrued at the time such removal of the wreck is completed.

Section 604

Ranking order of liens listed under the same number

(1) Liens for the claims listed in section 596 (1) numbers 1 through 3 and number 5 shall rank *pari passu* as between themselves insofar as they are listed under the same number, irrespective of the time at which they arose.

(2) Liens for the personal-injury claims listed in section 596 (1) number 3 shall take priority over liens for property-damage claims listed under the same number.

(3) With regard to liens for the claims listed in section 596 (1) number 4, the lien for a claim that arose later shall take priority over the lien for a claim that arose earlier. Liens for claims that arose at the same point in time shall rank *pari passu* as between themselves.

Chapter 6

Statutory limitation period

Section 605

One-year statutory limitation period

The following claims shall become time-barred after one year:

1. Claims under a contract for the carriage of goods by sea and under a bill of lading;
2. Claims under charter contracts;
3. Claims to contribution in general average;
4. Claims to which the *Reeders* are entitled amongst each other pursuant to section 571 (2).

Section 606

Two-year statutory limitation period

The following claims shall become time-barred after two years:

1. Claims to compensation of damages for death of or personal injury to a passenger, or for the loss of, physical damage to, or delayed re-delivery of luggage, insofar as such claims are subject to the regulations set out in this Book;
2. Claims to compensation of damages resulting from the collision of ships or from one of the incidents set out under Section 572;
3. Claims to a salvage reward, to special compensation, and to the compensation of the costs of salvage;
4. Claims for the removal of a wreck.

Section 607

Commencement of statutory limitation periods

(1) The limitation period for the claims set out in section 605 number 1 shall commence on the date the goods are delivered or, failing such delivery, on the date the goods should have been delivered. If the claims arise from a voyage charter contract, the commencement of the

limitation period shall be determined based on the date on which goods were delivered at the end of the last voyage, or based on the date they should have been delivered.

(2) In derogation from subsection (1), the limitation period for recourse claims of an obligor of a claim set out in Section 605 number 1 shall commence on the day on which the judgment against the recourse claimant becomes final and non-reviewable or, should no legally final and non-reviewable judgment exist, on the day on which the recourse claimant has satisfied the claim. The first sentence shall not apply if the recourse debtor was not informed of the damage within three months after the recourse claimant became aware of the damage and of the recourse debtor's identity.

(3) The limitation period for the claims under charter contracts set out in section 605 number 2 shall commence at the end of the year in which the claim arises. Subsection (2) shall be applied *mutatis mutandis* to the limitation of the recourse rights enjoyed by a debtor of a claim arising from a time charter contract.

(4) The limitation period for the claims set out in Section 605 numbers 3 and 4 shall commence at the end of the year in which the claim arose.

(5) The limitation period for the claims to compensation of damages set out in Section 606 number 1 shall commence as follows:

1. For claims in respect of the personal injury of a passenger, from the date of disembarkation;

2. For claims in respect of the death of a passenger: from the date when disembarkation should have taken place or, if the passenger died after disembarking, from the day of the passenger's death, but in no case later than one year after the passenger's disembarkation;

3. For claims in respect of the loss of, physical damage to or delayed re-delivery of the luggage, from the date of disembarkation or from the date on which the passenger should have disembarked, whichever is later.

(6) The limitation period for claims to compensation of damages resulting from a collision of ships as set out under section 606 number 2 or resulting from an incident covered by section 572 shall commence at the time of the incident causing the damage.

(7) The limitation period for the claims set out in section 606 numbers 3 and 4 shall commence upon completion of the salvage measures or wreck removal efforts. Subsection (2) shall be applied *mutatis mutandis* to the limitation of the recourse rights enjoyed by a debtor of such claims.

Section 608

Extension of the limitation period

The limitation period of the claims set out in sections 605 and 606 may also be extended by the creditor's declaration asserting the creditor's claims to compensation; such an extension shall run for as long as the debtor refuses to satisfy the claim. Both the assertion of claims and the refusal to satisfy the same must be made in text form (a readable statement that is permanently valid without a signature having been applied). Any further declaration concerning the same claim to compensation shall not result in an additional extension of the limitation period.

Section 609

Arrangements as to the limitation period

(1) The limitation of claims to compensation of damages under a contract for the carriage of general cargo or under a bill of lading for the loss of or physical damage to the goods may be eased or impeded only by an agreement reached after detailed negotiations, whether for one or several similar contracts between the same parties. However, any provision in the bill of lading easing the limitation of claims to compensation of damages shall be invalid vis-à-vis third parties.

(2) The limitation of claims resulting from personal injuries to persons, physical damage, or delayed re-delivery of luggage as set out in section 606 number 1 may be extended only by a declaration on the part of the carrier or by an agreement between the parties made after the grounds on which the claim is based have arisen. Both the declaration and the agreement must be made in writing. Any easing of the limitation, specifically a reduction in the limitation period, shall not be admissible.

Section 610 **Concurrent claims**

If contractual claims to the compensation of damages that are subject to the regulations of the present Chapter are found to compete with concurrent, non-contractual claims to the compensation of damages, then the regulations of the present Chapter shall also apply to said non-contractual claims.

Chapter 7 **General limitation of liability**

Section 611 **Convention as to the limitation of liability**

(1) The liability for maritime claims may be limited pursuant to the Convention on Limitation of Liability for Maritime Claims of 19 November 1976 (published in the Federal Law Gazette (*Bundesgesetzblatt*) 1986 II p. 786), as amended by the protocol of 2 May 1996 (Federal Law Gazette 2000 II p. 790), in the version respectively valid for the Federal Republic of Germany (Convention on Limitation of Liability for Maritime Claims). This shall also apply to liability for bunker-oil pollution damage in accordance with the International Convention of 2001 on Civil Liability for Bunker Oil Pollution Damage (Federal Law Gazette 2006 II p. 578) (Bunkers Convention).

(2) According to the provisions of the 1992 International Convention on Civil Liability for Oil Pollution Damage (Federal Law Gazette 1994 II p. 1150, citation on p. 1152) (International Convention on Civil Liability for Oil Pollution Damage, 1992), the liability for claims covered by this Convention may be limited.

(3) Where claims to the compensation of "pollution damage" in the sense as defined in Article I number 6 of the International Convention on Civil Liability for Oil Pollution Damage, 1992 are asserted, and the International Convention on Civil Liability for Oil Pollution Damage, 1992 is not applicable, the persons designated in Article 1 of the Convention on Limitation of Liability for Maritime Claims may limit their liability for such claims by correspondingly applying the provisions of the Convention on Limitation of Liability for Maritime Claims. If one and the same incident gives rise to claims of the type set out in the first sentence as well as to claims for which liability may be limited pursuant to subsection (1), then the limits of liability under the Convention on Limitation of Liability for Maritime Claims shall apply, respectively, to the entirety of the claims set out in the first sentence, as well as to the entirety of the claims for which liability may be limited pursuant to subsection (1).

(4) Liability may not be limited for the following:

1. Claims designated in Article 3 letter e) of the Convention on Limitation of Liability for Maritime Claims, provided the contract of service is subject to German law;
2. Claims to compensation of costs incurred in bringing or defending against a legal action.

(5) Where the Convention on Limitation of Liability for Maritime Claims and in the International Convention on Civil Liability for Oil Pollution Damage, 1992 are silent, sections 612 through 617 shall apply.

Section 612 **Limitation of liability for claims arising from the removal of a wreck**

(1) The Convention on Limitation of Liability for Maritime Claims (section 611 (1) first sentence) shall apply to the claims set out below, with the proviso that such claims shall be subject to a separate limit of liability irrespective of their legal basis:

1. Claims in respect of the reimbursement of the costs of the raising, removal, destruction, or the rendering harmless of a ship which is sunk, wrecked, stranded, or abandoned, including anything that is or has been on board such ship, and
2. Claims in respect of reimbursement of the costs of the removal, destruction, or the rendering harmless of the cargo of the ship.

The claims set out in the first sentence shall not be subject, however, to the limitation of liability insofar as they concern remuneration contractually agreed with the responsible party.

(2) The limit of liability pursuant to subsection (1) shall be calculated in accordance with Article 6 paragraph (1) letter b) of the Convention on Limitation of Liability for Maritime Claims. The limit of liability shall apply to the entirety of the claims designated in subsection (1), insofar as such claims derive from the same incident and arise against persons who belong to the groups of persons listed in Article 9 paragraph (1) letter a), b), or c) of the Convention on Limitation of Liability for Maritime Claims. Said limit of liability may only be applied to satisfy the claims specified in subsection (1); Article 6 paragraphs (2) and (3) of the Convention on Limitation of Liability for Maritime Claims shall not be applicable.

Section 613

Limitation of liability for small ships

Insofar as a ship has a tonnage of no more than 250 tons, the limit of liability to be calculated in accordance with Article 6 paragraph (1) letter b) of the Convention on Limitation of Liability for Maritime Claims (section 611 (1) first sentence) shall be assessed at half of the limit of liability applicable to ships with a tonnage of 2,000 tons.

Section 614

Limitation of liability for damages to harbours and waterways

Without prejudice to the right set out in Article 6 (2) of the Convention on Limitation of Liability for Maritime Claims (section 611 (1) first sentence) with regard to claims for loss of life or personal injury, any claims in respect of physical damage to harbour works, basins and waterways and to aids to navigation shall take priority over other claims under Article 6 (1) letter b) of the Convention on Limitation of Liability for Maritime Claims.

Section 615

Limitation of the pilot's liability

(1) The limits of liability set out in Article 6 (1) letter a) and letter b) of the Convention on Limitation of Liability for Maritime Claims (section 611 subsection (1) first sentence) shall apply to claims against a pilot working on board the ship, with the proviso that, if the tonnage of the piloted ship is in excess of 2,000 tons, the pilot may limit his liability to the amount derived under an assumed tonnage of 2,000 tons.

(2) The limit of liability set out in Article 7 (1) of the Convention on Limitation of Liability for Maritime Claims shall apply to claims against a pilot working on board the ship, with the proviso that, if the ship's certificate of registry permits the carriage of more than twelve (12) passengers, the pilot may limit his liability to the amount derived under the assumption that only twelve (12) passengers were being carried.

(3) The constitution and distribution of a fund containing the amounts to be calculated pursuant to subsections (1) or (2), as well as the effects of constituting such a fund, shall be governed by those provisions of Article 11 of the Convention on Limitation of Liability for Maritime Claims which relate to the constitution and distribution of a fund and the effects of constituting a fund. However, Article 11 (3) of the Convention on Limitation of Liability for Maritime Claims shall not be applicable if the tonnage of a piloted ship is in excess of 2,000 tons, as per subsection (1), or if the ship is licensed to carry more than twelve (12) passengers pursuant to its certificate of registry, as per subsection (2).

(4) A pilot who is not working on board the piloted ship may limit his liability for the claims set out in Article 2 of the Convention on Limitation of Liability for Maritime Claims by correspondingly applying section 611 subsections (1), (3), and (4), as well as sections 612 through 614 and section 617, subject to the proviso that a special limit of liability shall apply for these claims; this shall be calculated pursuant to subsection (1) or (2) and shall be available exclusively to satisfy claims against the pilot.

Section 616

Conduct barring limitation of liability

(1) Where the person liable is a legal entity or a commercial partnership, it shall not be entitled to the benefit of the limitation of liability if both of the following apply:

1. The damage is attributable to an act or omission by a member of the body authorised to represent such entity or partnership, or by a shareholder authorised to represent it, and
2. The limitation of liability pursuant to Article 4 of the Convention on Limitation of Liability for Maritime Claims (section 611 (1) first sentence) or pursuant to Article V (2) of the International Convention on Civil Liability for Oil Pollution Damage, 1992 (section 611 subsection (2)) is ruled out as a result of such act or omission.

The same shall apply if the debtor is a partner of a *Reederei* and the damage is attributable to an act or omission of the correspondent ship-owner manager representing the other ship owners.

(2) Where the person liable is a commercial partnership, each shareholder may limit his personal liability with regard to any claim for which the partnership is also entitled to limit its liability.

Section 617

Procedure for limiting liability

- (1) The constitution and distribution of a fund within the meaning of Article 11 of the Convention on Limitation of Liability for Maritime Claims (section 611 (1) first sentence) or within the meaning of Article V (3) of the International Convention on Civil Liability for Oil Pollution Damage, 1992 (section 611 subsection (2)) shall be governed by the regulations of the Maritime Distribution Statute (*Schiffahrtsrechtliche Verteilungsordnung*).
- (2) The limitation of liability pursuant to the Convention on Limitation of Liability for Maritime Claims may also be asserted in the event that no fund is constituted within the meaning of Article 11 of the Convention on Limitation of Liability for Maritime Claims. Section 305a of the Code of Civil Procedure (*Zivilprozessordnung*) shall remain unaffected.

Chapter 8

Procedural Rules

Section 618

Injunction by a salvor

Upon a salvor (section 574 (1)) filing a corresponding petition, the court responsible for hearing the main action may, at its equitable discretion and in due consideration of the facts of the case, issue an injunction obligating the debtor of a claim to a salvage reward or special compensation to make a fair and reasonable interim payment to the salvor; at the same time, the court may also stipulate the terms of such performance. Such an injunction may be issued even if the pre-requisites stipulated in sections 935 and 940 of the Code of Civil Procedure have not been met.

Section 619

Service of documents to the master or skipper of a ship

Notice of legal action by a maritime lienor to obtain toleration of compulsory enforcement against a ship, or a ruling or court order handed down in proceedings for the arrest of a ship, may be served on the master of said ship or, if an inland waterway vessel is involved, on the ship's skipper.

**Chapter 9
(repealed)**

**Chapter 11
(repealed)**

**Annex
(repealed)**