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## **Swiss Civil Procedure Code** **(Civil Procedure Code, CPC)**

of 19 December 2008 (Status as of 1 May 2013)

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*The Federal Assembly of the Swiss Confederation,*  
based on Article 122 paragraph 1 of the Federal Constitution<sup>1</sup>,  
and having considered the Federal Council Dispatch of 28 June 2006<sup>2</sup>,  
*decrees:*

### **Part 1: General Provisions**

#### **Title 1: Subject Matter and Scope of Application**

##### **Art. 1** Subject matter

This Code governs the proceedings before the cantonal authorities for:

- a. contentious civil matters;
- b. court orders in non-contentious matters;
- c. court orders in matters of debt enforcement and bankruptcy law;
- d. arbitration.

##### **Art. 2** International matters

The provisions of international treaties and of the Federal Act of 18 December 1987<sup>3</sup> on International Private Law (IPLA) are reserved.

##### **Art. 3** Organisation of the courts and the conciliation authorities

The organisation of the courts and the conciliation authorities is in the competence of the cantons, unless the law provides otherwise.

AS 2010 1739

<sup>1</sup> SR 101

<sup>2</sup> BBI 2006 7221

<sup>3</sup> SR 291

## **Title 2: Jurisdiction of the Courts and Recusal**

### **Chapter 1: Material Jurisdiction and Functional Jurisdiction**

#### **Art. 4 Principles**

<sup>1</sup> Cantonal law governs the material jurisdiction and functional jurisdiction of the courts, unless the law provides otherwise.

<sup>2</sup> If the material jurisdiction depends on the value in dispute, such value is calculated according to this Code.

#### **Art. 5 Court of sole cantonal instance**

<sup>1</sup> The cantonal law designates the court that has jurisdiction as sole cantonal instance for:

- a. disputes in connection with intellectual property rights, including disputes concerning the nullity, ownership, licensing, transfer and violation of such rights;
- b. cartel law disputes;
- c. disputes on the use of a business name;
- d. disputes under the Unfair Competition Act of 19 December 1986<sup>4</sup> if the amount in dispute exceeds 30,000 francs or if the Confederation exercises its right to file an action;
- e. disputes under the Nuclear Energy Public Liability Act of 18 March 1983<sup>5</sup>;
- f. claims against the Confederation;
- g. the designation of a special comptroller by virtue of Article 697b of the Code of Obligations<sup>6</sup> (CO);
- h. disputes under the Federal Act of 23 June 2006<sup>7</sup> on Collective Capital Investment Schemes and the Stock Exchange Act of 24 March 1995<sup>8</sup>.

<sup>2</sup> This court is also competent to order interim measures before an action is pending.

#### **Art. 6 Commercial Court**

<sup>1</sup> The cantons may designate a special court that has jurisdiction as sole cantonal instance for commercial disputes (Commercial Court).

<sup>2</sup> A dispute is considered commercial, if:

- a. it concerns the commercial activity of at least one party;

<sup>4</sup> SR 241

<sup>5</sup> SR 732.44

<sup>6</sup> SR 220

<sup>7</sup> SR 951.31

<sup>8</sup> SR 954.1

- b. the decision is subject to an objection in civil matters to the Federal Supreme Court; and
- c. the parties are registered in the Swiss Commercial Registry or in an equivalent foreign registry.

<sup>3</sup> If only the defendant is registered in the Swiss Commercial Register or in an equivalent foreign register, but all the other conditions are met, the plaintiff may choose between the Commercial Court and the ordinary court.

<sup>4</sup> The cantons may also assign to the Commercial Court:

- a. the disputes mentioned in Article 5 paragraph 1;
- b. the disputes relating to the law of commercial companies and cooperatives.

<sup>5</sup> The Commercial Court is also competent to order interim measures before an action is pending.

**Art. 7** Disputes concerning insurance supplementary to social health insurance

The cantons may designate a court that has jurisdiction as sole cantonal instance for disputes relating to insurance supplementary to social health insurance under the Federal Act of 18 March 1994<sup>9</sup> on Health Insurance.

**Art. 8** Direct action before the higher court

<sup>1</sup> If in a financial dispute the value in dispute is at least CHF 100,000, the plaintiff may, with the consent of the defendant, file its action directly before the higher court.

<sup>2</sup> This court decides as the sole cantonal instance.

## **Chapter 2: Territorial Jurisdiction**

### **Section 1: General Provisions**

**Art. 9** Mandatory jurisdiction

<sup>1</sup> A place of jurisdiction is mandatory only if the law expressly so provides.

<sup>2</sup> Parties may not derogate from a mandatory place of jurisdiction.

**Art. 10** Domicile and registered office

<sup>1</sup> Unless this Code provides otherwise, the following court has jurisdiction:

- a. for actions against a natural person: the court at the person's domicile;

<sup>9</sup> SR 832.10

- b. for actions against legal entities, public corporations and institutions as well as general partnerships and limited partnerships: the court at the location of their registered office;
- c. for actions against the Confederation: the Supreme Court of the Canton of Bern or the supreme court of the canton where the plaintiff's domicile, registered office or habitual residence is located;
- d. for actions against a canton: a court in the canton's capital.

<sup>2</sup> Domicile is determined in accordance with the Civil Code<sup>10</sup> (CC). Article 24 CC does not apply.

**Art. 11**            Residence

<sup>1</sup> If the defendant has no domicile, the court at his or her habitual residence has jurisdiction.

<sup>2</sup> A habitual residence is the place where a person lives for a certain period of time, even if that period is limited from the outset.

<sup>3</sup> If the defendant has no habitual residence, the court at his or her last known place of residence has jurisdiction.

**Art. 12**            Establishment

For actions arising out of the commercial or professional activity of an establishment or branch, the court at the defendant's domicile or registered office or at the location of the establishment has jurisdiction.

**Art. 13**            Interim measures

Unless the law provides otherwise, the following court has mandatory jurisdiction to order interim measures:

- a. the court that has jurisdiction to decide the main action; or
- b. the court at the place where the measure is to be enforced.

**Art. 14**            Counterclaim

<sup>1</sup> A counterclaim may be filed in the court that has jurisdiction over the main action, provided the counterclaim has a factual connection with the main action.

<sup>2</sup> This place of jurisdiction subsists even if the main action is dismissed for whatever reason.

<sup>10</sup> SR 210

**Art. 15** Joinder of parties and joinder of actions

<sup>1</sup> If an action is directed against two or more defendants, the court that has jurisdiction with regard to one defendant has jurisdiction with regard to all defendants unless jurisdiction is based solely on an agreement on jurisdiction.

<sup>2</sup> If two or more actions that are factual connected are raised against one and the same defendant, each court that has jurisdiction over any one of the actions has jurisdiction over all of them.

**Art. 16** Third party action

The court that has jurisdiction to decide the main action also decides on the third party action.

**Art. 17** Agreement on jurisdiction

<sup>1</sup> Unless the law provides otherwise, the parties may agree on which court has jurisdiction over an existing or future dispute arising from a particular legal relationship. Unless the agreement provides otherwise, the action may only be brought before agreed court.

<sup>2</sup> The agreement must be in writing or in any other form allowing it to be evidenced by text.

**Art. 18** Acceptance by appearance

Unless the law provides otherwise, the seised court has jurisdiction if the defendant enters an appearance on the merits without objecting to the court's jurisdiction.

**Art. 19** Non-contentious matters

Unless the law provides otherwise, the court or authority at the domicile or registered office of the applicant has mandatory jurisdiction over non-contentious matters.

**Section 2: Law of Persons****Art. 20** Protection of personal privacy and data protection

The court at the domicile or registered office of either of the parties has jurisdiction to decide on:

- a. actions based on an invasion of the personal privacy;
- b. requests for a right of reply;
- c. actions for name protection and actions challenging a name change;

- d. actions and requests based on Article 15 of the Federal Act of 19 June 1992<sup>11</sup> on Data Protection.

**Art. 21** Declaration of death and declaration of presumed death

The court at the last known domicile of the missing person has mandatory jurisdiction over applications relating to a declaration of death or declaration of presumed death (Art. 34 to 38 CC<sup>12</sup>).

**Art. 22** Modification of the civil register

For actions concerning the modification of the civil register, the court of the district in which the entry to be modified was made or should have been made has mandatory jurisdiction.

**Section 3: Family Law**

**Art. 23** Applications and actions based on marital law

<sup>1</sup> The court at the domicile of either of the parties has mandatory jurisdiction over applications and actions based on marital law as well as applications for interim measures.

<sup>2</sup> The court at the domicile of the debtor has mandatory jurisdiction over applications for separation of property by the supervisory authority in debt enforcement and bankruptcy matters.

**Art. 24** Applications and actions in registered partnership matters

The court at the domicile of one of the parties has mandatory jurisdiction over applications and actions in matters of registered partnerships as well as requests for interim measures.

**Art. 25** Actions relating to parent-child relationships

The court at the domicile of one of the parties has mandatory jurisdiction over actions to declare or contest a parent-child relationship.

**Art. 26** Actions for maintenance and assistance

The court at the domicile of either of the parties has mandatory jurisdiction over separate actions claiming maintenance brought by children against their parents or for actions against relatives with an obligation to provide assistance.

<sup>11</sup> SR 235.1

<sup>12</sup> SR 210

**Art. 27** Claims of the unmarried mother

The court at the domicile of either of the parties has mandatory jurisdiction over the claims of the unmarried mother.

**Section 4: Law of Succession****Art. 28**

<sup>1</sup> The court at the last domicile of the deceased has jurisdiction over actions under the law of succession as well as actions for the division of the marital property on the death of a spouse or a registered partner.

<sup>2</sup> The authorities at the last domicile of the deceased have mandatory jurisdiction over measures in connection with succession. If death did not occur at the domicile, the authorities at the place of death shall notify the authorities at the place of domicile and take the necessary measures to ensure the conservation of the assets situated at the place of death.

<sup>3</sup> Independent actions for the allocation on death of an agricultural enterprise or agricultural land may also be brought before the court at the place where the property is located.

**Section 5: Property Law****Art. 29** Immovable property

<sup>1</sup> The court at the place where a property is or should be recorded in the land register has jurisdiction to decide on:

- a. actions in rem;
- b. actions against the community of condominium owners;
- c. actions for the registration of statutory charges on immovable property.

<sup>2</sup> Other actions relating to immovable property rights may also be brought before the court at the domicile or registered office of the defendant.

<sup>3</sup> If an action concerns multiple properties or if a property is recorded in the land register of several districts, the court where the largest property or the largest part of the property is situated has jurisdiction.

<sup>4</sup> In non-contentious matters relating to immovable property rights, the court at the place where the property is or should be recorded in the land register has mandatory jurisdiction.

**Art. 30** Chattels

<sup>1</sup> For actions relating to rights in rem or possession of chattels or claims secured by charges on chattels, the court at the domicile or registered office of the defendant or at the place where the item is located has jurisdiction.

<sup>2</sup> In non-contentious matters, the court at the domicile or registered office of the applicant or with the court at the place where the item is located has mandatory jurisdiction.

**Section 6: Actions in Contract****Art. 31** Principle

The court at the domicile or registered office of the defendant or at the place where the characteristic performance must be rendered has jurisdiction over actions related to contracts.

**Art. 32** Consumer contracts

<sup>1</sup> The following court has jurisdiction in disputes concerning consumer contracts:

- a. for actions brought by the consumer: the court at the domicile or registered office of one of the parties;
- b. for actions brought by the supplier: the court at the domicile of the defendant.

<sup>2</sup> Consumer contracts are contracts on supplies for ordinary consumption intended for the personal use of the consumer or his family and offered by the other party in the course of its professional or commercial activity.

**Art. 33** Tenancy and lease of immovable property

The court at the place where the immovable property is situated has jurisdiction to decide actions based on a contract for the tenancy or lease of immovable property.

**Art. 34** Employment Law

<sup>1</sup> The court at the domicile or registered office of the defendant or where the employee normally carries out his or her work has jurisdiction to decide actions relating to employment law.

<sup>2</sup> If a job applicant or an employee brings an action based on the Recruitment Act of 6 October 1989<sup>13</sup>, the court at the place of the business establishment of the recruitment or hiring agent with whom the contract was concluded also has jurisdiction.

<sup>13</sup> SR 823.11



**Art. 35** Waiver of statutory jurisdiction

<sup>1</sup> The following persons may not waive the jurisdiction provided for in Articles 32 to 34, whether in by advance agreement or by entering appearance:

- a. the consumer;
- b. the tenant or lessee of a residential or business property;
- c. the farmer in case of agricultural farm leases;
- d. the person seeking employment or the employee.

<sup>2</sup> The conclusion of an agreement on jurisdiction after the emergence of the dispute is reserved.

**Section 7: Actions in Tort****Art. 36** Principle

The court at the domicile or registered office of the aggrieved person or the defendant, or where the act occurred or had its effect has jurisdiction over actions in tort.

**Art. 37** Damages for unjustified interim measures

The court at the domicile or registered office of the defendant or at the place where the measures have been ordered has jurisdiction to decide actions for damages resulting from unjustified interim measures.

**Art. 38** Motor vehicle and bicycle accidents

<sup>1</sup> The court at the domicile or registered office of the defendant or at the place of the accident has jurisdiction to decide actions resulting from motor vehicle and bicycle accidents.

<sup>2</sup> Actions against the Swiss National Bureau of Insurance (Art. 74 of the Road Traffic Act of 19 December 1958<sup>14</sup>; RTA) or against the Swiss National Guarantee Fund (Art. 76 RTA) may also be brought before the court at the place of any branch of such institutions.

**Art. 39** Incidental civil claim

The competence of the criminal court to decide incidental civil actions is reserved.

<sup>14</sup> SR 741.01

## Section 8: Commercial Law

### Art. 40 Company law

The court at the domicile or registered office of the defendant or the court at the registered office of the company has jurisdiction to decide actions concerning liability in company law.

### Art. 41<sup>15</sup>

### Art. 42 Mergers, demergers, transformations, transfers of assets and liabilities

The court at the registered office of one of the involved entities has jurisdiction to decide actions relating to the Mergers Act of 3 October 2003<sup>16</sup>.

### Art. 43 Cancellation of securities and insurance policies, injunction against payment

<sup>1</sup> The court at the registered office of the company has mandatory jurisdiction to declare the cancellation of shares.

<sup>2</sup> The court at the place where the immovable property is recorded in the land register has mandatory jurisdiction to declare the cancellation of mortgage instruments.

<sup>3</sup> The court at the domicile or registered office of the debtor has mandatory jurisdiction to declare the cancellation of other securities and insurance policies.

<sup>4</sup> The court at the place of payment has mandatory jurisdiction to issue injunctions against payment under a bill of exchange or cheque and to declare their cancellation.

### Art. 44 Bonds

The place of jurisdiction for the authorisation to convene a creditors' meeting is governed by Article 1165 CO<sup>17</sup>.

### Art. 45 Collective investment schemes

The court at the registered office of the concerned licence holder has mandatory jurisdiction to decide on actions brought by the investors or the representative of the community of investors.

<sup>15</sup> Repealed by No II 1 of the Federal Act of 28 Sept. 2012, with effect from 1 May 2013 (AS 2013 1103; BBl 2011 6875).

<sup>16</sup> SR 221.301

<sup>17</sup> SR 220

## **Section 9: Debt Enforcement and Bankruptcy Law**

### **Art. 46**

The place of jurisdiction for actions under the Federal Act of 11 April 1889<sup>18</sup> on Debt Enforcement and Bankruptcy (DEBA) is determined by this chapter unless the DEBA provides for a place of jurisdiction.

## **Chapter 3: Recusal**

### **Art. 47** Grounds for recusal

<sup>1</sup> Judges and judicial officers shall recuse themselves if:

- a. they have a personal interest in the case;
- b. they have acted in the same case in another capacity, in particular as member of an authority, legal agent, expert witness, witness or mediator;
- c. they are or were married to, or live or lived in a registered partnership or co-habit with a party or his or her representative or a person who has acted in the same case as a member of the lower court;
- d. they are related to a party by birth or marriage in direct line or in collateral line up to the third degree;
- e. they are related by birth or marriage in direct line or in collateral line up to the second degree to the representative of a party or a person who has acted in the same case as a member of the lower court;
- f. they may not be impartial for other reasons, notably due to friendship or enmity with a party or his or her representative.

<sup>2</sup> Involvement in the following, in particular, is in itself no reason for recusal:

- a. the decision on legal aid;
- b. the conciliation proceedings;
- c. the setting aside of an objection under Articles 80 to 84 DEBA<sup>19</sup>;
- d. the ordering of interim measures;
- e. proceedings for protection of the marital union.

### **Art. 48** Duty to provide information

The judge or judicial officer concerned shall make a timely disclosure of any possible reason for recusal and shall recuse him- or herself voluntarily if he or she considers that such reason exists.

<sup>18</sup> SR 281.1

<sup>19</sup> SR 281.1

**Art. 49** Application for recusal

<sup>1</sup> A party that wishes to challenge a judge or judicial officer must file the corresponding application as soon as it has become aware of the reason for recusal. It must show credibly the facts that justify the challenge.

<sup>2</sup> The judge or judicial officer concerned shall respond to the application.

**Art. 50** Decision

<sup>1</sup> If the reason given for recusal is disputed, the court shall decide.

<sup>2</sup> The decision may be challenged by objection.

**Art. 51** Consequences of violating the regulations on recusal

<sup>1</sup> Procedural acts in which a person obliged to recuse him- or herself has participated must be annulled and repeated if a party so requests within 10 days of becoming aware of the reason for recusal.

<sup>2</sup> If the taking of evidence cannot be repeated, the relevant evidence may be taken into consideration by the deciding court.

<sup>3</sup> If a reason for recusal is detected only after the close of the proceedings, the provisions on review apply.

**Title 3: Procedural Principles and Procedural Requirements****Chapter 1: Procedural Principles****Art. 52** Acting in good faith

All those who participate in proceedings must act in good faith.

**Art. 53** Right to be heard

<sup>1</sup> The parties have the right to be heard.

<sup>2</sup> They have in particular the right to consult the case files and to obtain copies thereof provided this does not conflict with overriding public or private interests.

**Art. 54** Publicity

<sup>1</sup> Hearings and any oral passing of judgment shall be conducted in public. The decisions are made accessible to the public.

<sup>2</sup> Cantonal law determines whether the deliberations are public.

<sup>3</sup> Proceedings may be held completely or partially in camera when required by public interest or by the legitimate interests of a person involved.

<sup>4</sup> Family law proceedings are not conducted in public.

**Art. 55** Principles of production of evidence and of ex-officio investigation

<sup>1</sup> The parties must present the court with the facts in support of their case and submit the related evidence.

<sup>2</sup> Statutory provisions relating to the ex-officio establishment of facts and taking of evidence are reserved.

**Art. 56** Court's duty to enquire

If a party's submissions are unclear, contradictory, ambiguous or manifestly incomplete, and the court shall give the party the opportunity to clarify or complete the submission by asking appropriate questions.

**Art. 57** Ex-officio application of the law

The court applies the law ex-officio.

**Art. 58** Principles of non ultra petita and ex-officio assessment

<sup>1</sup> The court may not award a party anything more than or different from what the party has requested, nor less than what the opposing party has acknowledged.

<sup>2</sup> The statutory provisions under which the court is not bound by the parties' requests are reserved.

**Chapter 2: Procedural Requirements****Art. 59** Principle

<sup>1</sup> The court shall consider an action or application provided the procedural requirements are satisfied.

<sup>2</sup> Procedural requirements are in particular the following:

- a. the plaintiff or applicant has a legitimate interest;
- b. the court has subject matter and territorial jurisdiction;
- c. the parties have the capacity to be a party and the capacity to take legal action;
- d. the case is not the subject of pending proceedings elsewhere;
- e. the case is not already the subject of a legally-binding decision;
- f. the advance and security for costs have been paid.

**Art. 60** Verification of compliance with the procedural requirements

The court shall examine ex-officio whether the procedural requirements are satisfied.

**Art. 61** Arbitration agreement

If the parties have concluded an arbitration agreement relating to an arbitrable dispute, the seised court shall decline jurisdiction unless:

- a. the defendant has made an appearance without reservation;
- b. the court holds that the arbitration agreement is manifestly invalid or unenforceable; or
- c. the arbitral tribunal cannot be constituted for reasons that are manifestly attributable to the defendant in the arbitration proceedings.

**Title 4: Pendency and Effects of Withdrawal of the Action****Art. 62** Start of pendency

<sup>1</sup> A case becomes pending when an application for conciliation, an action, an application, or a joint request for divorce is filed.

<sup>2</sup> Confirmation of receipt of such submissions shall be issued to the parties.

**Art. 63** Pendency where the court has no jurisdiction or the procedure is incorrect

<sup>1</sup> If a submission that has been withdrawn or rejected due to lack of jurisdiction is filed again with the competent conciliation authority or court within one month of withdrawal or the declaration of non-admissibility, the date of the first filing is deemed to be the date of pendency.

<sup>2</sup> The same applies if the claim was not filed under the proper procedure.

<sup>3</sup> The special statutory deadlines for filing actions under the DEBA<sup>20</sup> are reserved.

**Art. 64** Effects of pendency

<sup>1</sup> The pendency of an action has in particular the following effects:

- a. the subject matter of the dispute may not be made pending elsewhere between the same parties.
- b. the territorial jurisdiction of the court is maintained.

<sup>2</sup> When compliance with statutory deadline under private law depends on the date of the statement of claim, of raising an action or of another act initiating legal proceedings, the relevant moment is that of pendency in accordance with this Code.

**Art. 65** Effects of withdrawal

Any person who withdraws an action before the competent court may not bring proceedings again against the same party on the same subject matter if the court has

<sup>20</sup> SR 281.1

already served the statement of claim on the defendant and the defendant does not consent to its withdrawal.

## **Title 5: Parties and Participation of Third Parties**

### **Chapter 1: Capacity to be a Party and Capacity to take Legal Action**

#### **Art. 66** Capacity to be a party

The capacity to be a party is subject to legal capacity or the qualification as a party by virtue of federal law.

#### **Art. 67** Capacity to take legal action

<sup>1</sup> Any person who has the capacity to act has the capacity to take legal action.

<sup>2</sup> A person without capacity to act may act through his legal representative.

<sup>3</sup> Provided a person without the capacity to act has the capacity to consent, he or she may

- a. independently exercise those rights conferred by virtue of his or her personality;
- b. temporarily take the acts necessary in cases of imminent danger.

### **Chapter 2: Representation of the Parties**

#### **Art. 68** Representation by agreement

<sup>1</sup> Any person who has capacity to take legal action may choose to be represented in proceedings.

<sup>2</sup> The following persons are allowed to act as professional representatives:

- a. in all proceedings: lawyers admitted to represent parties before Swiss courts under the Lawyers Act of 23 June 2000<sup>21</sup>;
- b. before the conciliation authorities, in financial disputes under the simplified procedure and in cases under the summary procedure: licensed administrators and legal agents if provided for by cantonal law;
- c. in cases under the summary procedure in accordance with Article 251 of this Code: professional representatives under Article 27 DEBA<sup>22</sup>;
- d. before the special courts for tenancy matters and for employment matters: professionally qualified representatives if provided for by cantonal law.

<sup>3</sup> The representative must prove his or her authority by power of attorney.

<sup>21</sup> SR 935.61

<sup>22</sup> SR 281.1

<sup>4</sup> The court may order the personal appearance of a represented party.

**Art. 69**            Inability to appear

<sup>1</sup> If a party is manifestly unable to appear, the court may invite that party to appoint a representative. If the party does not comply within the set deadline, a representative shall be appointed by the court.

<sup>2</sup> The court shall notify the Adult and Child Protection Authority if protective measures are deemed necessary.<sup>23</sup>

**Chapter 3: Joinder of Parties**

**Art. 70**            Mandatory joinder

<sup>1</sup> If two or more persons are in a legal relationship that calls for one single decision with effect for all of them, they must jointly appear as plaintiffs or be sued as joint defendants.

<sup>2</sup> Procedural measures duly taken by one of the joint parties are likewise effective for the others, with the exception of challenging a decision.

**Art. 71**            Voluntary joinder

<sup>1</sup> Two or more persons whose rights and duties result from similar circumstances or legal grounds may jointly appear as plaintiffs or be sued as joint defendants.

<sup>2</sup> Voluntary joinder is excluded if the individual cases are subject to different types of procedure.

<sup>3</sup> Each of the joint parties may proceed independently from the others.

**Art. 72**            Joint representation

The joint parties may appoint a joint representative, failing which service is made to each party individually.

**Chapter 4: Third Party Intervention**

**Section 1: Principal Intervention**

**Art. 73**

<sup>1</sup> Any person who claims to have a better right in the object of a dispute, to the total or partial exclusion of both parties, may bring a claim directly against both parties in the court in which the dispute is pending in first instance.

<sup>23</sup> Amended by Annex 2 No 3, in force since 1 Jan. 2013 (AS **2010** 1739; BBI **2006** 7221; AS **2011** 725; BBI **2006** 7001).



<sup>2</sup> The court may either suspend the proceedings until the case of the principal intervenor is finally concluded, or join the two cases.

## **Section 2: Accessory Intervention**

### **Art. 74** Principle

Any person who shows a credible legal interest in having a pending dispute decided in favour of one of the parties may intervene at any time as an accessory party and for this purpose submit to the court an intervention application.

### **Art. 75** Application

<sup>1</sup> The application for intervention shall indicate the reasons for intervention and the party in whose favour the intervention is made.

<sup>2</sup> The court decides on the application after hearing the parties. The decision may be challenged by way of objection.

### **Art. 76** Rights of the Intervenor

<sup>1</sup> The intervenor may carry out any procedural acts in support of the principal party, provided they are permitted at the relevant stage of the proceedings; he or she may in particular make use of any offensive or defensive measures and also seek appellate remedies.

<sup>2</sup> The procedural acts of the intervenor shall not be taken into consideration in the proceedings if they are contradictory to those of the principal party.

### **Art. 77** Effect of intervention

A result that is unfavourable to the principal party is effective against the intervenor, unless:

- a. the state of the proceedings at the moment of intervention or the acts or omissions of the principal party have prevented the intervenor from making use of offensive or defensive measures; or
- b. the principal party has failed, wilfully or through gross negligence, to make use of offensive or defensive measures of which the intervenor was not aware.

## **Chapter 5: Third Party Notice and Third Party Action**

### **Section 1: Third Party Notice**

#### **Art. 78** Principles

<sup>1</sup> A party may notify a third party of the dispute if, in the event of being unsuccessful, he or she might take recourse against or be subject to recourse by a third party.

<sup>2</sup> The notified third party may also give notice of the dispute.

#### **Art. 79** Standing of the third party

<sup>1</sup> The notified third party may:

- a. intervene in favour of the notifying principal party, without further conditions; or
- b. proceed in place of the notifying principal party, with the consent of the latter.

<sup>2</sup> If the notified third party refuses to intervene or does not answer the notification, the proceedings shall continue without considering the third party.

#### **Art. 80** Effects of notice

Article 77 applies by analogy.

### **Section 2: Third Party Action**

#### **Art. 81** Principles

<sup>1</sup> The notifying party may assert the rights that he or she believes he or she will have against the notified third party in the event that he or she is unsuccessful in the court that is dealing with the main action.

<sup>2</sup> The notified third party may not bring a further third party action.

<sup>3</sup> The third party action is not admissible under the simplified or summary procedures.

#### **Art. 82** Procedure

<sup>1</sup> The request for the third party action to be admitted must be made with the answers or the reply in the main proceedings. The notifying party shall set out the prayers to be raised against the third party together with a brief statement of the grounds.

<sup>2</sup> The court shall give the opposing party and the third party the opportunity to respond.

<sup>3</sup> If the third party action is admitted, the court shall determine the time and extent of the related exchange of written submissions, subject to Article 125.

<sup>4</sup> The decision to admit the third party action may be challenged by way of objection.

## **Chapter 6: Substitution of a Party**

### **Art. 83**

<sup>1</sup> If the object in dispute is alienated in the course of the proceedings, the acquirer may take up the proceedings in place of the alienating party.

<sup>2</sup> The substitute party is liable for the entire costs of the proceedings. The retiring party is jointly and severally liable for the costs incurred until the substitution.

<sup>3</sup> In justified cases, the substituting party must, if so requested by the opposing party, provide security to guarantee the enforcement of the decision.

<sup>4</sup> In the absence of alienation of the object in dispute, the substitution of a party is permitted only with the consent of the opposing party; special legal provisions on the legal succession are reserved.

## **Title 6: Actions**

### **Art. 84** Action for performance

<sup>1</sup> By filing an action for performance, the plaintiff demands that the defendant be ordered to do, refrain from doing or tolerate something.

<sup>2</sup> In an action for the payment of money, the amount must be specified.

### **Art. 85** Action for an unquantified debt

<sup>1</sup> If it is impossible or unreasonable to quantify the amount of the debt at the start of the proceedings, the plaintiff may bring an action for an unquantified debt. However, the plaintiff must indicate a minimal amount as a provisional value in dispute.

<sup>2</sup> Once evidence is taken or the required information furnished by the defendant, the plaintiff must quantify the debt claim as soon as he or she is able to do so. The seised court maintains competence even if the value in dispute exceeds its material jurisdiction.

### **Art. 86** Partial action

If a claim is divisible, an action for part of the claim may be brought.

### **Art. 87** Action to modify a legal relationship

By filing an action to modify a legal relationship, the plaintiff demands the creation, modification or dissolution of a specific right or legal relationship.

**Art. 88** Action for a declaratory judgment

By filing an action for a declaratory judgment, the plaintiff demands that the court establish that a right or legal relationship exists or does not exist.

**Art. 89** Group action

<sup>1</sup> Associations and other organisations of national or regional importance that are authorised by their articles of association to protect the interests of a certain group of individuals may bring an action in their own name for a violation of the personality of the members of such group.

<sup>2</sup> They may request the court:

- a. to prohibit an imminent violation;
- b. to put an end to an ongoing violation;
- c. to establish the unlawful character of a violation if the latter continues to have a disturbing effect.

<sup>3</sup> Special legal provisions on group actions are reserved.

**Art. 90** Combination of actions

The plaintiff may combine two or more claims against the same party in one action, if:

- a. they are within the material jurisdiction of the same court; and
- b. they are subject to the same type of procedure.

**Title 7: Value in Dispute****Art. 91** Principle

<sup>1</sup> The value in dispute is determined by the prayers for relief. Interest, costs of the ongoing proceedings or a possible publication of the decision and the value of possible subsidiary claims are not taken into account.

<sup>2</sup> If the prayers for relief do not specify a sum of money, the court shall determine the value in dispute if the parties are unable to reach an agreement or if the information they provide is manifestly incorrect.

**Art. 92** Recurring usage or services

<sup>1</sup> Recurring usage or services have the value of the capital they represent.

<sup>2</sup> If the duration of the recurring usage or services is unknown or indefinite, the annual usage or services multiplied by twenty is deemed to be the value of the capital; in case of a life annuity, the amount of the capital corresponds to the actual cash value.

**Art. 93** Joinder of parties and joinder of actions

<sup>1</sup> In the event of the voluntary joinder of parties or joinder of actions, the values of the claims are added together insofar as they are not mutually exclusive.

<sup>2</sup> In case of permissive joinder of parties, the type of procedure for each claim is maintained despite the addition of their values.

**Art. 94** Counterclaim

<sup>1</sup> In the case of an action and counterclaim, the value in dispute is determined by the action with the higher value.

<sup>2</sup> For the purpose of determining the costs, the values of the action and the counterclaim are added together insofar as they are not mutually exclusive.

**Title 8: Costs and Legal Aid****Chapter 1: Procedural Costs****Art. 95** Definitions

<sup>1</sup> The procedural costs include:

- a. the court costs;
- b. the party costs.

<sup>2</sup> The court costs include:

- a. the fee for the conciliation proceedings;
- b. the fee for the decision (judgment fee);
- c. the costs of taking evidence;
- d. the costs of translation;
- e. the costs of representation for a child (Art. 299 and 300).

<sup>3</sup> The party costs include:

- a. the reimbursement of necessary outlays;
- b. the costs for professional representation;
- c. in justified cases: reasonable compensation for personal efforts if a party is not professionally represented.

**Art. 96** Tariffs

The cantons set the tariffs for the procedural costs.

**Art. 97** Advice on procedural costs

The court shall advise a party without legal representation on the costs to be expected and on legal aid.

**Art. 98** Advance payment of costs

The court may demand that the plaintiff make an advance payment up to the amount of the expected court costs.

**Art. 99** Security for party costs

<sup>1</sup> At the request of the defendant, the plaintiff must provide security for party costs:

- a. if he or she has no residence or registered office in Switzerland;
- b. if he or she appears to be insolvent, notably if he or she has been declared bankrupt or is involved in ongoing composition proceedings or if certificates of unpaid debts have been issued;
- c. if he or she owes costs from prior proceedings; or
- d. if for other reasons there seems to be a considerable risk that the compensation will not be paid.

<sup>2</sup> In the case of mandatory joinder, security must be provided only if each party fulfils one of the above mentioned conditions.

<sup>3</sup> No security need be provided:

- a. in simplified proceedings, with the exception of financial disputes under Article 243 paragraph 1;
- b. in divorce proceedings;
- c. in summary proceedings, with the exception of the proceedings in clear cases (Art. 257).

**Art. 100** Nature and amount of security

<sup>1</sup> Security may be provided in cash or in the form of a guarantee from a bank with a branch in Switzerland or from an insurance company authorised to operate in Switzerland.

<sup>2</sup> The court may subsequently order the increase, reduction or return of the security.

**Art. 101** Provision of advance and security

<sup>1</sup> The court sets a deadline for the provision of the advance and the security.

<sup>2</sup> It may order interim measures before the security is provided.

<sup>3</sup> If the advance or security is not provided even within a period of grace, the action or application shall be declared inadmissible.

**Art. 102** Advance for taking of evidence

<sup>1</sup> Each party shall advance the costs for taking the evidence that he or she requires.

<sup>2</sup> If the parties offer the same evidence, each party shall advance half of the costs.

<sup>3</sup> If one party fails to pay an advance, the other party may do so, failing which the evidence shall not be taken. Matters in which the court must establish the facts ex officio are reserved.

**Art. 103** Appellate remedy

Decisions relating to advances of costs and security may be challenged by way of objection.

**Chapter 2: Allocation and Settlement of Procedural Costs**

**Art. 104** Decision on costs

<sup>1</sup> As a general rule, the court decides on the procedural costs in the final decision.

<sup>2</sup> Where an interim decision is made (Art. 237), the procedural costs incurred up to that point may be allocated.

<sup>3</sup> The decision on the procedural costs for interim measures may be deferred until the final decision on the merits.

<sup>4</sup> If a case is referred back to a lower court, the higher court may leave it to the lower court to allocate the costs of the appellate proceedings.

**Art. 105** Determination and allocation of costs

<sup>1</sup> The court costs are determined and allocated ex officio.

<sup>2</sup> The court awards party costs according to the tariffs (Art. 96). The parties may submit a statement of costs.

**Art. 106** General principles of allocation

<sup>1</sup> The costs are charged to the unsuccessful party. If an action is not admitted by the court or if it is withdrawn, the plaintiff is deemed to be the unsuccessful party; in case of acceptance of the claim it is the defendant.

<sup>2</sup> If no party entirely is successful, the costs are allocated in accordance with the outcome of the case.

<sup>3</sup> If three or more persons are participating in the proceedings as principal parties or accessory parties, the court shall determine each party's share of the costs. It may hold the parties jointly and severally liable.

**Art. 107** Discretionary allocation

<sup>1</sup> The court may diverge from the general principles of allocation and allocate the costs at its own discretion:

- a. if an action has been upheld in principle but not the full amount claimed, and if the amount of the award was determined at the court's discretion or if the claim was difficult to quantify;
- b. if a party was caused to litigate in good faith;
- c. in family law proceedings;
- d. in proceedings relating to a registered partnership;
- e. if the proceedings are dismissed as groundless and the law does not provide otherwise;
- f. if there are other extraordinary circumstances that would result in an allocation according to the outcome of the case being inequitable.

<sup>2</sup> Court costs that are not attributable to any party or third party may be charged to the canton if equitable.

**Art. 108** Unnecessary costs

Unnecessary costs are charged to the party that caused them.

**Art. 109** Allocation in the event of a settlement

<sup>1</sup> If a case is settled in court, the costs are charged to the parties according to the terms of the settlement.

<sup>2</sup> The costs are allocated according to Articles 106-108:

- a. if the settlement does not provide for the allocation of costs; or
- b. if, in terms of the settlement, the costs are charged solely to a party that has been granted legal aid.

**Art. 110** Appellate remedy

The decision on costs may be separately challenged by way of objection only.

**Art. 111** Recovery of costs

<sup>1</sup> The court costs are set off against the advances paid by the parties. The balance is collected from the person liable to pay.

<sup>2</sup> The party liable to pay shall reimburse the other party his or her advances and shall pay the other party the party costs awarded.

<sup>3</sup> The provisions on legal aid are reserved.

**Art. 112** Deferment, waiver, prescription and interest

<sup>1</sup> The court may defer or, in the event of permanent lack of means, waive the court costs.

<sup>2</sup> The debt prescribes ten years after the close of proceedings.



<sup>3</sup> The default interest is 5 percent.

### Chapter 3: Special Provisions on Costs

#### Art. 113 Conciliation proceedings

<sup>1</sup> No party costs are awarded in conciliation proceedings. Payment by the canton of legal agents under the legal aid system is reserved.

<sup>2</sup> No court costs are charged in disputes:

- a. relating to the Gender Equality Act of 24 March 1995<sup>24</sup>;
- b. relating to the Disability Discrimination Act of 13 December 2002<sup>25</sup>;
- c. relating to the rental and lease of residential and business property or the lease of agricultural property;
- d. relating to an employment contract or the Recruitment Act of 6 October 1989<sup>26</sup> up to an amount in dispute of 30,000 francs;
- e. relating to the Participation Act of 17 December 1993<sup>27</sup>;
- f. relating to insurance supplementary to the social health insurance under the Federal Act of 18 March 1994<sup>28</sup> on Health Insurance.

#### Art. 114 Litigation proceedings

In litigation proceedings, no court costs are charged in disputes:

- a. relating to the Gender Equality Act of 24 March 1995<sup>29</sup>;
- b. relating to the Disability Discrimination Act of 13 December 2002<sup>30</sup>;
- c. relating to an employment contract or the Recruitment Act of 6 October 1989<sup>31</sup> up to an amount in dispute of 30,000 francs;
- d. relating to the Participation Act of 17 December 1993<sup>32</sup>;
- e. relating to insurance supplementary to the social health insurance under the Federal Act of 18 March 1994<sup>33</sup> on Health Insurance.

- 24 SR 151.1  
 25 SR 151.3  
 26 SR 823.11  
 27 SR 822.14  
 28 SR 832.10  
 29 SR 151.1  
 30 SR 151.3  
 31 SR 823.11  
 32 SR 822.14  
 33 SR 832.10

**Art. 115** Obligation to bear costs

Court costs may also be charged in cost-free proceedings to a party who proceeds in a vexatious manner or in bad faith.

**Art. 116** Exemption under cantonal law

<sup>1</sup> The cantons may provide for further exemptions from procedural costs.

<sup>2</sup> Exemptions from costs that the canton provides for itself, its communes or other corporations under public cantonal law also apply to the Confederation.

**Chapter 4: Legal Aid****Art. 117** Entitlement

A person is entitled to legal aid if:

- a. he or she does not have sufficient financial resources; and
- b. his or her case does not seem devoid of any chances of success.

**Art. 118** Extent

<sup>1</sup> Legal aid comprises:

- a. an exemption from the obligation to pay advances and provide security;
- b. an exemption from court costs;
- c. the appointment by the court of a legal agent under the legal aid system if this is necessary to protect the rights of the party concerned, and in particular if the opposing party is represented by a legal agent; the legal agent under the legal aid system may be appointed prior to the court hearing in order to prepare the proceedings.

<sup>2</sup> Legal aid may be granted for all or part of the case.

<sup>3</sup> The grant of legal aid does not relieve the party concerned from paying party costs to the opposing party.

**Art. 119** Application and procedure

<sup>1</sup> The application for legal aid may be made before or after an action becomes pending.

<sup>2</sup> The applicant must disclose his or her financial circumstances including income and assets and state his or her position on the merits of the case and the evidence he or she intends to produce. He or she may name a preferred legal agent in the application.

<sup>3</sup> The court shall decide on the application in summary proceedings. The opposing party may be heard, and must be heard if legal aid is to cover security for party costs.

<sup>4</sup> In exceptional circumstances, legal aid may be granted with retrospective effect.

<sup>5</sup> A new application for legal aid must be made in appellate proceedings.

<sup>6</sup> No court costs are charged for proceedings relating to the granting of legal aid, except in cases of bad faith or vexatious conduct.

**Art. 120**          Revocation of legal aid

The court shall revoke legal aid if the conditions are no longer fulfilled or if it comes to light that they never were fulfilled.

**Art. 121**          Appellate remedy

The decision by which legal aid is refused or revoked in full or in part may be challenged by way of objection.

**Art. 122**          Recovery of costs

<sup>1</sup> If a party with legal aid is unsuccessful, the costs shall be settled as follows:

- a. the legal agent under the legal aid system shall be adequately remunerated by the canton;
- b. the court costs shall be charged to the canton;
- c. the opposing party shall have its advances refunded;
- d. the party with legal aid must pay party costs to the opposing party.

<sup>2</sup> If the party with legal aid is successful, the legal agent under the legal aid system shall be adequately remunerated by the canton where compensation from the opposing party is irrecoverable or likely to be irrecoverable. By paying the remuneration, the canton becomes entitled to enforce the claim for costs.

**Art. 123**          Reimbursement

<sup>1</sup> A party must reimburse the legal aid received as soon as he or she is in a position to do so.

<sup>2</sup> The canton's claim prescribes 10 years after the close of proceedings.

**Title 9:          Director of Proceedings, Procedural Acts and Deadlines**

**Chapter 1:      Director of proceedings**

**Art. 124**          Principles

<sup>1</sup> The court is the director of proceedings. It issues the required procedural rulings to enable the proceedings to be prepared and conducted efficiently.

<sup>2</sup> The role of director of proceedings may be delegated to one of the members of the court.

<sup>3</sup> The court may at any time attempt to achieve an agreement between the parties.

**Art. 125** Simplification of proceedings

In order to simplify the proceedings, the court may, in particular:

- a. limit the proceedings to individual issues or prayers for relief;
- b. order the separation of jointly filed actions;
- c. order the joinder of separately filed actions;
- d. separate the counterclaim from the main proceedings.

**Art. 126** Suspension of proceedings

<sup>1</sup> The court may suspend proceedings if appropriate. The proceedings may be suspended in particular if the decision depends on the outcome of other proceedings.

<sup>2</sup> Suspension may be challenged by way of objection.

**Art. 127** Transfer of connected cases

<sup>1</sup> If factually connected cases are pending before different courts, the subsequently seised court may transfer the case to the court seised first if that court agrees to take over.

<sup>2</sup> The transfer may be challenged by way of objection.

**Art. 128** Procedural discipline and vexatious conduct

<sup>1</sup> Any person who violates decency in court or disrupts the course of the proceedings shall be liable to a reprimand or a disciplinary fine not exceeding 1,000 francs. In addition, the court may exclude the person concerned from the hearing.

<sup>2</sup> The court may request the assistance of the police to enforce its orders.

<sup>3</sup> In the event of bad faith or vexatious conduct, the parties and their representatives shall be liable to a disciplinary fine not exceeding 2,000 francs, and in the event of a repetition not exceeding 5,000 francs.

<sup>4</sup> The disciplinary fine may be challenged by way of objection.

**Chapter 2: Forms of Procedural Acts**

**Section 1: Language of the Proceedings**

**Art. 129**

The proceedings shall be held in the official language of the canton in which the case is heard. Cantons that recognise two or more official languages shall regulate their use in the proceedings.

## **Section 2: Party Submissions**

### **Art. 130** Form

<sup>1</sup> Submissions must be filed with the court in the form of paper documents or electronically. They must be signed.

<sup>2</sup> In the case of electronic transmission, the document containing the submission and its enclosures must be certified by the recognised electronic signature of the sender. The Federal Council shall determine the format for transmission.

<sup>3</sup> The court may request that the electronically transmitted submission and its annexes be subsequently filed in paper form.

### **Art. 131** Number of copies

Submissions and their annexes in paper form must be filed once for the court and once for each opposing party, failing which the court may set a period of grace or make the copies at the defaulting party's expense.

### **Art. 132** Defective, querulous and abusive submissions

<sup>1</sup> The court shall set a deadline for rectifying formal defects such as a missing signature or missing power of attorney. In the event of default, the submission is not taken into consideration.

<sup>2</sup> The same applies to submissions that are illegible, improper, incomprehensible or incoherent.

<sup>3</sup> Querulous or abusive submissions are returned to the sender without further formalities.

## **Section 3: Summons**

### **Art. 133** Content

The summons contains:

- a. the name and address of the summoned party;
- b. the matter in dispute and the parties;
- c. the capacity in which the party is summoned;
- d. the place, date and time of the appearance;
- e. the procedural act to which the party is summoned;
- f. the consequences of default;
- g. the date of the summons and the seal of the court.

**Art. 134** Timing

Unless the law provides otherwise, the summons must be sent out at least 10 days prior to the date of appearance.

**Art. 135** Postponement of appearance

If there is good reason, the court may postpone the date of an appearance. It may do so:

- a. ex officio; or
- b. if a request to do so is made before the date.

**Section 4: Service of Process****Art. 136** Documents to be served

The court shall serve the persons concerned in particular with:

- a. the summons;
- b. rulings and decisions;
- c. the submissions of the opposing party.

**Art. 137** Service to a representative

If a party is represented, service is made to the representative.

**Art. 138** Form

<sup>1</sup> The summons, rulings and decisions are served by registered mail or by other means against confirmation of receipt.

<sup>2</sup> Service is accomplished when the document has been received by the addressee or one of his or her employees or a person of at least 16 years of age living in the same household, unless the court instructs that a document must be served personally on the addressee.

<sup>3</sup> Service is also deemed to have been effected:

- a. in the case of a registered letter that has not been collected: on the seventh day after the failed attempt to serve it provided the person had to expect such service;
- b. in the case of personal service if the addressee refuses to accept service and if such refusal is recorded by the bearer: on the day of refusal.

<sup>4</sup> Other documents may be served by regular mail.

**Art. 139** Electronic service

<sup>1</sup> With the consent of the person concerned, service may be effected electronically.

<sup>2</sup> The Federal Council shall regulate the details.

**Art. 140** Domicile for service

The court may instruct parties with domicile or registered office abroad to provide a domicile for service in Switzerland.

**Art. 141** Public notice

<sup>1</sup> Service shall be effected by notice in the official gazette of the canton or in the Swiss Official Gazette of Commerce where:

- a. the whereabouts of the addressee are unknown and cannot be ascertained despite making reasonable enquiries;
- b. service is impossible or would lead to exceptional inconvenience;
- c. if a party with domicile or registered office abroad has not provided a domicile for service in Switzerland despite being instructed to do so by the court.

<sup>2</sup> Service is deemed accomplished on the day of publication.

### **Chapter 3: Limitation Periods, Default and Restitution**

#### **Section 1: Limitation Periods**

**Art. 142** Computation

<sup>1</sup> Limitation periods triggered by a communication or the occurrence of an event starting on the following day.

<sup>2</sup> If a limitation period is measured in months, it expires on the same date of the last month as the date of the month in which the period started to run. In the absence of such a date, the period expires on the last day of the month.

<sup>3</sup> If the last day of a limitation period is a Saturday, a Sunday or a public holiday recognised by federal or cantonal law at the location of the court, the period expires on the following working day.

**Art. 143** Compliance

<sup>1</sup> Submissions must be filed no later than the last day of the limitation period, either by filing with the court or by handing over to Swiss Post or a diplomatic mission or consular office of Switzerland for forwarding on to the court.

<sup>2</sup> In case of electronic transmission, the deadline is met if the host system at the official electronic address of the court confirms the receipt no later than on the last day of the limitation period.

<sup>3</sup> Payment to the court is made within the deadline if the funds are handed over to Swiss Post in favour of the court or debited from a postal or bank account in Switzerland no later than on the last day of the limitation period.

**Art. 144** Extension

<sup>1</sup> Statutory limitation periods may not be extended.

<sup>2</sup> Limitation periods set by the court may be extended for good reason if the request to do so is made before the period expires.

**Art. 145** Suspension of limitation periods

<sup>1</sup> Statutory limitation periods or periods set by the court shall be suspended:

- a. from the seventh day before Easter up to and including the seventh day after Easter;
- b. from 15 July up to and including 15 August;
- c. from 18 December up to and including 2 January.

<sup>2</sup> The suspension does not apply:

- a. in conciliation proceedings;
- b. in summary proceedings.

<sup>3</sup> Parties must be made aware of the exceptions provided in paragraph 2 above.

<sup>4</sup> The provisions of the DEBA<sup>34</sup> on debt enforcement holidays and suspension are reserved.

**Art. 146** Effects of suspension

<sup>1</sup> If service is effected during suspension, the limitation period starts to run on the first day following the end of the suspension.

<sup>2</sup> No hearings are held in court during the suspension period, unless the parties agree otherwise.

**Section 2: Default and Restitution****Art. 147** Default and consequences of default

<sup>1</sup> A party is in default if he or she fails to accomplish a procedural act within the set limitation period or does not appear when summoned to appear.

<sup>2</sup> The proceedings shall continue without the act defaulted on unless the law provides otherwise.

<sup>3</sup> The court shall draw the parties' attention to the consequences of default.

<sup>34</sup> SR 281.1



**Art. 148** Restitution

<sup>1</sup> The court may on application grant a period of grace or summon the parties again for a new appearance provided the defaulting party shows credibly that he or she was not responsible for the default or was responsible only to a minor extent.

<sup>2</sup> The application must be submitted within 10 days of the day when the cause of default has ceased to apply.

<sup>3</sup> If notice of a decision has been given to the parties, restitution may be requested only within six months after the decision has come into force.

**Art. 149** Restitution procedure

The court shall invite the opposing party to comment on the application and shall issue a final decision.

**Title 10: Evidence****Chapter 1: General Provisions****Art. 150** Subject of evidence

<sup>1</sup> Evidence is required to prove facts that are legally relevant and disputed.

<sup>2</sup> Evidence may also be required to prove common practice, local usages and, in financial disputes, foreign law.

**Art. 151** Known facts

Evidence is not required in support of publicly known facts, facts known to the court and commonly accepted rules of experience.

**Art. 152** Right to evidence

<sup>1</sup> Each party is entitled to have the court accept the evidence that he or she offers in the required form and time.

<sup>2</sup> Illegally obtained evidence shall be considered only if there is an overriding interest in finding the truth.

**Art. 153** Taking of evidence ex officio

<sup>1</sup> The court takes evidence ex officio whenever it must ascertain the facts ex officio.

<sup>2</sup> It may take evidence ex officio if serious doubts exist as to the truth of an undisputed fact.

**Art. 154** Ruling on evidence

Before evidence is taken, the court issues the necessary rulings. They indicate, in particular, the admissible evidence and, for each fact, which party has the burden of proof or counter-proof. Rulings on evidence may be changed or amended any time.

**Art. 155** Taking of evidence

<sup>1</sup> The taking of evidence may be delegated to one or more members of the court.

<sup>2</sup> A party may, for good cause, request that the evidence be taken by the court that decides the case.

<sup>3</sup> The parties have the right to participate in the taking of evidence.

**Art. 156** Safeguarding legitimate interests

The court shall take appropriate measures to ensure that taking evidence does not infringe the legitimate interests of any parties or third party, such as business secrets.

**Art. 157** Free assessment of evidence

The court forms its opinion based on its free assessment of the evidence taken.

**Art. 158** Precautionary taking of evidence

<sup>1</sup> The court shall take evidence at any time if:

- a. the law grants the right to do so;
- b. the applicant shows credibly that the evidence is at risk or that it has a legitimate interest.

<sup>2</sup> The provisions regarding interim measures apply.

**Art. 159** Management bodies of a legal entity

If a legal entity is party to proceedings, its management bodies are deemed to be parties when taking evidence.

**Chapter 2: Duty to Cooperate and Right to Refuse****Section 1: General Provisions****Art. 160** Duty to cooperate

<sup>1</sup> Parties and third parties have a duty to cooperate in the taking of evidence. In particular, they have the duty:

- a. to make a truthful deposition as a party or a witness;

b.<sup>35</sup> to produce the physical records, with the exception of documents forming correspondence between a party or a third party and a lawyer who is entitled to act as a professional representative, or with a patent attorney as defined in Article 2 of the Patent Attorney Act of 20 March 2009<sup>36</sup>

c. to allow an examination of their person or property by an expert.

<sup>2</sup> The court has free discretion to decide on the duty of minors to cooperate.<sup>37</sup> It shall take account of the child's welfare.

<sup>3</sup> Third parties that are under a duty to cooperate are entitled to reasonable compensation.

#### **Art. 161** Advice

<sup>1</sup> The court shall advise the parties and third parties of their duty to cooperate, the right to refuse to cooperate and the consequences of default.

<sup>2</sup> The court may not consider the evidence taken if parties or third parties have not been advised of their right to refuse to cooperate unless the person concerned consents or his or her refusal would not have been justified.

#### **Art. 162** Justified refusal to cooperate

The court may not infer from a party's or third party's legitimate refusal to cooperate that the alleged fact is proven.

### **Section 2: The Parties' Right to Refuse**

#### **Art. 163** Right to refuse

<sup>1</sup> A party may refuse to cooperate if:

- a. the taking of evidence would expose a close associate as defined in Article 165 to criminal prosecution or civil liability;
- b. the disclosure of a secret would be an offence under Article 321 of the Swiss Criminal Code<sup>38</sup> (SCC); the foregoing does not apply to auditors; Article 166 paragraph 1 letter b third subset applies by analogy.

<sup>2</sup> Other confidants entrusted with legally protected secrets may refuse to cooperate if they credibly demonstrate that the interest in keeping the secret outweighs the interest in finding the truth.

<sup>35</sup> Amended by No I 4 of the Federal Act of 28 Sept. 2012 on the Amendment of Procedural Provisions on Lawyers' Professional Secrecy, in force since 1 May 2013 (AS **2013** 847; BBI **2011** 8181).

<sup>36</sup> SR **935.62**

<sup>37</sup> Amended by Annex 2 No 3, in force since 1 Jan. 2013 (AS **2010** 1739; BBI **2006** 7221; AS **2011** 725; BBI **2006** 7001).

<sup>38</sup> SR **311.0**

**Art. 164** Unjustified refusal

If a party refuses to cooperate without valid reasons, the court shall take this into account when appraising the evidence.

**Section 3: Third Parties' Right to Refuse****Art. 165** Absolute right to refuse

<sup>1</sup> The following persons have the right to refuse to cooperate:

- a. any person who is or was married to or cohabits with a party;
- b. any person who has a child with a party;
- c. any person who is related to a party by birth or marriage in direct line or collaterally up to the third degree;
- d. the foster parents, foster children and foster siblings of a party;
- e.<sup>39</sup> the person appointed guardian or deputy for a party.

<sup>2</sup> A registered partnership is deemed equivalent to marriage.

<sup>3</sup> Step-siblings are deemed equivalent to siblings.

**Art. 166** Limited right to refuse

<sup>1</sup> Any third party may refuse to cooperate:

- a. in establishing facts that would expose him or her or a close associate as defined in Article 165 to criminal prosecution or civil liability;
- b. to the extent that the revelation of a secret would be punishable by virtue of Article 321 SCC<sup>40</sup>; auditors excepted; however, with the exception of lawyers and clerics, third parties must cooperate if they are subject to a disclosure duty or if they have been released from duty of secrecy, unless they show credibly that the interest in keeping the secret takes precedence over the interest in finding the truth;
- c. in establishing facts that have been confided in him or her in his or her official capacity as public official as defined in Article 110 paragraph 3<sup>41</sup> SCC or as a member of a public authority, or facts that have come to his or her attention in exercising his or her office; he or she must cooperate if he or she is subject to a disclosure duty or if he or she has been authorised to testify by his or her superior authority;
- d. when asked to testify as an ombudsperson or mediator on facts that have come to his or her attention in the course of his or her activities;

<sup>39</sup> Amended by Annex 2 No 3, in force since 1 Jan. 2013 (AS **2010** 1739; BBI **2006** 7221; AS **2011** 725; BBI **2006** 7001).

<sup>40</sup> SR **311.0**

<sup>41</sup> Corrected by the Federal Assembly Drafting Committee (Art. 58 para. 1 ParlA – SR **171.10**).

- e. when asked in his or her capacity as professional or auxiliary person engaged in the publication of information in the editorial part of a periodical to reveal the identity of the author or the content or source of his or her information.

<sup>2</sup> The confidants of other legally protected secrets may refuse to cooperate if they show credibly that the interest in keeping the secret outweighs the interest in establishing the truth.

<sup>3</sup> The special provisions of social security law concerning the disclosure of data are reserved.

**Art. 167** Unjustified refusal

<sup>1</sup> If a third party refuses to cooperate without justification, the court may:

- a. impose a disciplinary fine up to 1,000 francs;
- b. threaten sanctions under Article 292 SCC<sup>42</sup>;
- c. order the use of compulsory measures;
- d. charge the third party the costs caused by the refusal.

<sup>2</sup> The default of a third party has the same consequences as refusing to cooperate without a valid reason.

<sup>3</sup> The third party may challenge the court's order by way of objection.

## **Chapter 3: Evidence**

### **Section 1: Admissible Evidence**

**Art. 168**

<sup>1</sup> The following evidence is admissible:

- a. testimony;
- b. physical records;
- c. inspection;
- d. expert opinion;
- e. written statements;
- f. questioning and statements of the parties.

<sup>2</sup> The provisions relating to matters of children in family law proceedings are reserved.

## Section 2: Testimony

### Art. 169 Subject matter

Any person who is not a party may testify on matters that he or she has directly witnessed.

### Art. 170 Summons

<sup>1</sup> Witnesses are summoned by the court.

<sup>2</sup> The court may allow the parties to bring along witnesses without a summons.

<sup>3</sup> A witness may be questioned at his or her place of residence. The parties must be notified thereof in advance.

### Art. 171 Form of statement

<sup>1</sup> A witness shall be cautioned as to the requirement to tell the truth before being questioned; if at least 14 years of age, the witness shall also be advised of the criminal consequences of perjury (Art. 307 SCC<sup>43</sup>).

<sup>2</sup> The court shall question each witness individually with no other witnesses present; the foregoing is subject to the provisions on confrontation.

<sup>3</sup> The witness must testify without notes; the court may authorise the use of written documents.

<sup>4</sup> The court shall exclude witnesses from the remainder of the hearing as long as they have not been released from being a witness.

### Art. 172 Content of statement

The court shall ask witnesses:

- a. to state their particulars;
- b. to describe their personal relationship with the parties and other circumstances that may be relevant to the credibility of their testimony;
- c. to state the facts of the case as they have observed them.

### Art. 173 Additional questions

The parties may request that additional questions be put to the witness, or, with the consent of the court, they may themselves ask such questions.

### Art. 174 Confrontation

Witnesses may be confronted with each other or with the parties.

<sup>43</sup> SR 311.0

**Art. 175** Testimony of an expert witness

If a witness has special expertise, the court may also ask him or her questions about his or her assessment of the facts of the case.

**Art. 176** Transcript

<sup>1</sup> The essential details of the statement shall be placed on record, which is then read out or given to the witness to read and thereafter signed by the witness. Additional questions requested by the parties that have been rejected are also recorded if a party so requests.<sup>44</sup>

<sup>2</sup> In addition, the statement may be recorded on tape, by video or by other appropriate technical aids.

<sup>3</sup> If statements are recorded during a hearing using technical aids in accordance with 2, the court or the examining member of the court may dispense with reading the transcript back to the person examined and or giving that person the transcript to read and sign. The recordings are placed in the case files together with the transcript.<sup>45</sup>

**Section 3: Physical Records****Art. 177** Definition

The following are considered to be physical records: papers, drawings, plans, photos, films, audio recordings, electronic files and the like that are suitable to prove legally significant facts.

**Art. 178** Authenticity

The party invoking a physical record must prove its authenticity if this is disputed by the opposing party; the opposing party must give adequate grounds for disputing authenticity.

**Art. 179** Evidentiary force of public registers and official records

Public registers and official records are conclusive evidence of the facts stated therein, unless their content is proven to be incorrect

**Art. 180** Production of physical records

<sup>1</sup> A copy of the physical record may be produced in place of the original. The court or a party may request that the original or an officially certified copy be produced if there is justified doubt as to the authenticity of the physical record.

<sup>44</sup> Amended by No I 1 of the Federal Act of 28 Sept. 2012 (Transcription Regulations), in force since 1 May 2013 (AS 2013 851; BBl 2012 5707 5719).

<sup>45</sup> Inserted by No I 1 of the Federal Act of 28 Sept. 2012 (Transcription Regulations), in force since 1 May 2013 (AS 2013 851; BBl 2012 5707 5719).

<sup>2</sup> If parts of a lengthy physical record are cited as evidence, those parts must be highlighted.

#### **Section 4: Inspection**

##### **Art. 181** Procedure

<sup>1</sup> At the request of a party or ex officio, the court may conduct an inspection in order to see the facts for itself or for a better understanding of the case.

<sup>2</sup> The court may summon witnesses or experts to the inspection.

<sup>3</sup> The object of the inspection must be brought to court if it can be moved without difficulty.

##### **Art. 182** Record

A record must be kept of the inspection. If appropriate, the record shall include plans, drawings, photographs and other technical resources.

#### **Section 5: Expert Opinion**

##### **Art. 183** Principles

<sup>1</sup> At the request of a party or ex officio, the court may obtain an opinion from one or more experts. The court must hear the parties first.

<sup>2</sup> The same grounds apply for the recusal of experts as apply to judges and judicial officers.

<sup>3</sup> If the court relies on the special expertise of one of its members, it must inform the parties so that they may comment.

##### **Art. 184** Rights and obligations of the expert

<sup>1</sup> The expert must tell the truth and must submit his or her opinion within the set deadline.

<sup>2</sup> The court shall caution the expert as to the criminal consequences of perjury by an expert witness in terms of Article 307 SCC<sup>46</sup> and of a breach of official secrecy under Article 320 SCC as well as the consequences of default or failure to perform the mandate adequately.

<sup>3</sup> The expert is entitled to a fee. The decision of the court on the fee may be challenged by way of objection.

<sup>46</sup> SR 311.0



**Art. 185** Mandate

<sup>1</sup> The court shall instruct the expert and shall submit the relevant questions to him, either in writing or orally at the hearing.

<sup>2</sup> The court shall give the parties the opportunity to respond to the questions to be put to the expert and to propose that they be modified or supplemented.

<sup>3</sup> The court shall provide the expert with the necessary files and set a deadline for submitting the opinion.

**Art. 186** Enquiries by the expert

<sup>1</sup> With the authorisation of the court, the expert may carry out his or her own enquiries. He or she must disclose the results of the enquiries in the opinion.

<sup>2</sup> At the request of a party or ex officio, the court may order that the expert's enquiries be carried out again in accordance with the rules on taking evidence.

**Art. 187** Submission of the opinion

<sup>1</sup> The court may order that the expert submits his or her opinion in writing or presents it orally. It may also summon the expert to the hearing in order to explain his or her written opinion.

<sup>2</sup> An orally presented opinion must be placed on record in accordance with Article 176.

<sup>3</sup> If two or more experts have been mandated, each one shall submit a separate opinion, unless the court decides otherwise.

<sup>4</sup> The court shall give the parties the opportunity to ask for explanations or to put additional questions.

**Art. 188** Default and inadequate performance

<sup>1</sup> If the expert does not submit his or her opinion on time, the court may revoke the mandate and instruct another expert.

<sup>2</sup> If an opinion is incomplete, unclear or insufficiently reasoned, the court may at the request of a party or ex officio order that the opinion be completed or explained, or it may call in another expert.

**Art. 189** Arbitrator's opinion

<sup>1</sup> The parties may agree to obtain an arbitrator's opinion on the matters in dispute.

<sup>2</sup> Article 17 paragraph 2 governs the form of the agreement.

<sup>3</sup> The court is bound by the arbitrator's opinion with regard to the facts established therein provided:

- a. the parties are free to dispose of the legal relationship;
- b. no grounds for recusal existed against the expert arbitrator; and

- c. the opinion has been stated in an impartial manner and is not manifestly incorrect.

## **Section 6: Written Information**

### **Art. 190**

<sup>1</sup> The court may obtain information in writing from official authorities.

<sup>2</sup> It may obtain information in writing from private persons if the formal examination of a witness seems unnecessary.

## **Section 7: Examination of the Parties and Giving Evidence**

### **Art. 191** Examination of the parties

<sup>1</sup> The court may question one or both parties on the relevant facts of the case.

<sup>2</sup> Before the examination, the parties shall be cautioned that they must tell the truth and advised that if they wilfully lie, they may be liable to a disciplinary fine not exceeding 2,000 francs or, in the event of repeated lying, not exceeding 5,000 francs.

### **Art. 192** Giving evidence

<sup>1</sup> The court may ex officio order one or both parties to give evidence subject to criminal penalties for failure to do so.

<sup>2</sup> Before giving evidence, the parties shall be cautioned that they must tell the truth and advised of the criminal consequences of perjury (Art. 306 SCC<sup>47</sup>).

### **Art. 193** Record

Article 176 applies by analogy to the record of the examination of the parties and the evidence given.

## **Title 11: Mutual Assistance between Swiss Courts**

### **Art. 194** Principle

<sup>1</sup> Courts are obliged to provide mutual assistance.

<sup>2</sup> They shall correspond directly with each other<sup>48</sup>.

<sup>47</sup> SR 311.0

<sup>48</sup> The Swiss judicial authority with geographical jurisdiction for mutual assistance requests can be ascertained via the following website: [www.elorge.admin.ch](http://www.elorge.admin.ch)

**Art. 195** Procedural acts in another canton

Any court may carry out necessary procedural acts directly in another canton; in particular, it may hold hearings and take evidence there.

**Art. 196** Mutual assistance

<sup>1</sup> The court may request mutual assistance. The request may be made in the official language of either the requesting or the requested court.

<sup>2</sup> The requested court shall notify the requesting court and the parties of the place and time of the procedural act.

<sup>3</sup> The requested court may demand the reimbursement of its outlays.

**Part 2: Special Provisions****Title 1: Attempt at Conciliation****Chapter 1: Scope of Application and Conciliation Authority****Art. 197** Principle

Litigation shall be preceded by an attempt at conciliation before a conciliation authority.

**Art. 198** Exceptions

Conciliation proceedings are not held:

- a. in summary proceedings;
- b. in proceedings on civil status;
- c. in divorce proceedings;
- d. in proceedings for the dissolution of a registered partnership;
- e. for the following actions arising from the DEBA<sup>49</sup>:
  1. action for release from a debt (Art. 83 para. 2 DEBA)
  2. action for a declaratory judgment (Art. 85a DEBA),
  3. third party action (Art. 106-109 DEBA),
  4. action for participation (Art. 111 DEBA),
  5. third party actions and actions by the bankrupt estate (Art. 242 DEBA),
  6. action to challenge the schedule of claims (Art. 148 and 250 DEBA),
  7. action to ascertain new assets (Art. 265a DEBA),
  8. action for the recovery of items that are subject to the right of retention (Art. 284 DEBA);

<sup>49</sup> SR 281.1

- f. in disputes for which a court of sole cantonal instance has jurisdiction pursuant to Articles 5 and 6;
- g. for principal intervention, counterclaim and third party actions;
- h. if the court has set a deadline for filing the action.

**Art. 199** Waiver of conciliation

<sup>1</sup> In financial disputes with a value in dispute of at least 100,000 francs, the parties may mutually agree to waive any attempt at conciliation.

<sup>2</sup> The plaintiff may unilaterally waive conciliation:

- a. if the defendant's registered office or domicile is abroad;
- b. if the defendant's residence is unknown;
- c. in disputes under the Gender Equality Act of 24 March 1995<sup>50</sup>.

**Art. 200** Joint conciliation authorities

<sup>1</sup> In disputes relating to the tenancy and lease of residential and business property, the conciliation authority shall comprise a chairperson and an equal number of representatives of each of the parties.

<sup>2</sup> In disputes under the Gender Equality Act of 24 March 1995<sup>51</sup>, the conciliation authority shall comprise a chairperson and an equal number of representatives of the employer and employee and of the public and private sectors; the genders must be equally represented.

**Art. 201** Tasks of the conciliation authority

<sup>1</sup> The conciliation authority shall attempt to reconcile the parties in an informal manner. If it helps to resolve the dispute, a settlement may also include contentious matters that are not part of the proceedings.

<sup>2</sup> In the disputes mentioned in Article 200, the conciliation authority also provides legal advice to the parties.

## Chapter 2: Conciliation Proceedings

**Art. 202** Initiation

<sup>1</sup> Proceedings are initiated by an application for conciliation. The application may be filed in the forms provided for by Article 130 or orally for the record before the conciliation authority.

<sup>2</sup> The application for conciliation must identify the opposing party and include the prayers for relief and a description of the matter in dispute.

<sup>50</sup> SR 151.1

<sup>51</sup> SR 151.1

<sup>3</sup> The conciliation authority shall serve the opposing party with the application immediately and at the same time summon the parties to a hearing.

<sup>4</sup> In the disputes mentioned in Article 200, it may as an exception order the exchange of written submissions if it is considering a proposed judgment under Article 210 or a decision under Article 212.

**Art. 203**          Hearing

<sup>1</sup> The hearing must take place within two months of receipt of the application or the end of the exchange of written submissions.

<sup>2</sup> The conciliation authority shall consider the physical records presented to it and may conduct an inspection. If it is considering a proposed judgment under Article 210 or a decision under Article 212, it may also take other evidence unless this will substantially delay the proceedings.

<sup>3</sup> The hearing is not public. In the disputes mentioned in Article 200, the conciliation authority may allow full or partial public access to the hearings if there is a public interest.

<sup>4</sup> With the consent of the parties, the conciliation authority may hold additional hearings. The duration of the proceedings must not exceed twelve months.

**Art. 204**          Personal appearance

<sup>1</sup> The parties must appear in person at the conciliation hearing.

<sup>2</sup> They may be accompanied by legal agent or a confidant.

<sup>3</sup> The following persons are exempt from appearing in person and may send a representative:

- a. persons domiciled outside the canton or abroad;
- b. persons prevented from appearing due to illness or age or for other good cause;
- c. in the disputes mentioned in Article 243, an employee as the delegate of the employer or insurer and the property manager as delegate of the landlord, provided the persons so delegated are authorised in writing to conclude a settlement.

<sup>4</sup> The opposing party must be notified in advance of the representation.

**Art. 205**          Confidentiality of proceedings

<sup>1</sup> The statements of the parties may not be recorded or used subsequently in court proceedings.

<sup>2</sup> The use of the statements in the case of a proposed judgment or a decision by the conciliation authority is reserved.

**Art. 206** Default

<sup>1</sup> If the plaintiff is in default, the application for conciliation is deemed to have been withdrawn; the proceedings shall be dismissed as groundless.

<sup>2</sup> If the defendant is in default, the conciliation authority shall proceed as if no agreement has been achieved (Art. 209-212).

<sup>3</sup> If both parties are in default, the proceedings shall be dismissed as groundless.

**Art. 207** Costs of conciliation proceedings

<sup>1</sup> The costs of the conciliation proceedings are charged to the plaintiff:

- a. if the application is withdrawn;
- b. if the proceedings are dismissed due to default;
- c. if an authorisation to proceed is granted.

<sup>2</sup> If an action is filed, the costs of the conciliation proceedings become part of the action.

**Chapter 3: Agreement and Authorisation to Proceed****Art. 208** Agreement between the parties

<sup>1</sup> If an agreement is reached, the conciliation authority shall place on record the terms of the settlement, the acceptance of the claim or the unconditional withdrawal of the action, and have the record signed by the parties. Each party receives a copy of the record.

<sup>2</sup> The settlement, acceptance or unconditional withdrawal shall have the effect of a binding decision.

**Art. 209** Authorisation to proceed

<sup>1</sup> If no agreement is reached, the conciliation authority records this fact and grants authorisation to proceed:

- a. to the landlord in cases where a rent increase is challenged;
- b. to the plaintiff in all other cases.

<sup>2</sup> The authorisation to proceed contains:

- a. the names and addresses of the parties and their representatives, if any;
- b. the plaintiff's prayers for relief, a description of the matter in dispute, and any counterclaim;
- c. the date of the initiation of the conciliation proceedings;
- d. the decision on the costs of the conciliation proceedings;
- e. the date of the authorisation to proceed;

f. the seal of the conciliation authority.

<sup>3</sup> The plaintiff is entitled to file the action in court within three months of authorisation to proceed being granted.

<sup>4</sup> The deadline is 30 days in disputes over the tenancy and lease of residential and business property or the lease of agricultural property. Other statutory or judicial filing deadlines are reserved.

## **Chapter 4: Proposed Judgment and Decision**

### **Art. 210** Proposed judgment

<sup>1</sup> The conciliation authority may submit a proposed judgment to the parties:

- a. in disputes under the Gender Equality Act of 24 March 1995<sup>52</sup>;
- b. in disputes relating to the tenancy and lease of residential and business property or the lease of agricultural property if they concern the deposit of rent, protection against abusive rent, protection against termination, or the extension of the rental relationship;
- c. in other financial disputes, if the value in dispute does not exceed 5,000 francs.

<sup>2</sup> The proposed judgment may contain a short statement of grounds; otherwise, Article 238 applies by analogy.

### **Art. 211** Effects

<sup>1</sup> The proposed judgment is deemed to be accepted and has the effect of a binding decision if none of the parties rejects it within 20 days of written notification to the parties. The rejection needs no statement of grounds.

<sup>2</sup> After receiving the rejection, the conciliation authority shall grant authorisation to proceed:

- a. to the rejecting party in matters under Article 210 paragraph 1 letter b;
- b. to the plaintiff in all other cases.

<sup>3</sup> If in matters under Article 210 paragraph 1 letter b the action is not filed in time, the proposed judgment is deemed to be accepted and has the effect of a binding decision.

<sup>4</sup> The parties must be advised in the proposed judgment of its effects in accordance with paragraphs 1 to 3 above.

**Art. 212** Decision

<sup>1</sup> In financial disputes with a value in dispute not exceeding 2,000 francs, the conciliation authority may render a decision on the merits if the plaintiff so requests.

<sup>2</sup> The proceedings are oral.

**Title 2: Mediation****Art. 213** Mediation instead of conciliation

<sup>1</sup> If all the parties so request, the conciliation proceedings shall be replaced by mediation.

<sup>2</sup> The request must be made in the application for conciliation or at the conciliation hearing.

<sup>3</sup> The conciliation authority shall grant authorisation to proceed if it is notified by one of the parties that mediation has failed.

**Art. 214** Mediation during court proceedings

<sup>1</sup> The court may recommend mediation to the parties at any time.

<sup>2</sup> The parties may at any time make a joint request for mediation.

<sup>3</sup> The court proceedings remain suspended until the request is withdrawn by one of the parties or until the court is notified of the end of the mediation.

**Art. 215** Organisation and conduct of mediation

The parties are responsible for organising and conducting the mediation.

**Art. 216** Relationship with court proceedings

<sup>1</sup> Mediation proceedings are confidential and kept separate from the conciliation authority and the court.

<sup>2</sup> The statements of the parties may not be used in court proceedings.

**Art. 217** Approval of an agreement

The parties may jointly request that the agreement reached through mediation be approved. An approved agreement has the same effect as a legally binding decision.

**Art. 218** Costs of mediation

<sup>1</sup> The parties shall bear the costs of mediation.

<sup>2</sup> In non-financial matters of child law, the parties are entitled to cost-free mediation if:

- a. they do not have the necessary financial resources; and



- b. the court recommends mediation.

<sup>3</sup> Cantonal law may provide for further exemptions from costs.

### **Title 3: Ordinary Proceedings**

#### **Chapter 1: Scope of Application**

##### **Art. 219**

The provisions of this Title apply to ordinary proceedings and, by analogy, to all other proceedings, unless the law provides otherwise.

#### **Chapter 2: Exchange of Written Submissions and Preparation for the Main Hearing**

##### **Art. 220** Initiation

The ordinary proceedings are initiated by filing the statement of claim.

##### **Art. 221** Statement of claim

<sup>1</sup> The statement of claim contains:

- a. the designation of the parties and their representatives, if any;
- b. the prayers for relief;
- c. a statement of the value in dispute;
- d. the allegations of fact;
- e. notice of the evidence offered for each allegation of fact;
- f. the date and signature.

<sup>2</sup> The following must be filed together with the statement of claim:

- a. a power of attorney where a party is represented;
- b. the authorisation to proceed or the declaration that conciliation is being waived, if applicable;
- c. the available physical records to be offered in evidence;
- d. a list of the evidence offered.

<sup>3</sup> The statement of claim may include a statement of legal grounds.

##### **Art. 222** Statement of defence

<sup>1</sup> The court shall serve the defendant with the statement of claim and at the same time set a deadline for filing a written statement of defence.

<sup>2</sup> Article 221 applies to the statement of defence by analogy. The defendant must state therein which of the plaintiff's factual allegations are accepted and which are disputed.

<sup>3</sup> The court may order that the statement of defence be limited to specific issues or prayers (Art. 125).

<sup>4</sup> It shall serve the plaintiff with the statement of defence.

**Art. 223** Failure to file a statement of defence

<sup>1</sup> If the statement of defence is not filed within the deadline, the court shall allow the defendant a short period of grace.

<sup>2</sup> If the statement of defence is not filed by the end of the period of grace, the court shall make a final decision provided the court is in a position to make a decision. Otherwise, it shall summon the parties to the main hearing.

**Art. 224** Counterclaim

<sup>1</sup> The defendant may file a counterclaim in the statement of defence if the claim made by the defendant is subject to the same type of procedure as the main action.

<sup>2</sup> If the value of the counterclaim exceeds the material jurisdiction of the court, the court shall transfer both claims to the court with greater material jurisdiction.

<sup>3</sup> If a counterclaim is filed, the court shall set a deadline for the plaintiff to file a written defence. The plaintiff may not answer the counterclaim with a counterclaim.

**Art. 225** Second exchange of written submissions

The court shall order a second exchange of written submissions if the circumstances so require.

**Art. 226** Instruction hearing

<sup>1</sup> The court may hold instruction hearings at any time during the proceedings.

<sup>2</sup> Instruction hearings are held to discuss the matter in dispute in an informal manner, to complete the facts, to attempt to reach an agreement and to prepare for the main hearing.

<sup>3</sup> The court may take evidence.

**Art. 227** Amendment of the statement of claim

<sup>1</sup> An amendment of the statement of claim is admissible if the new or amended claim is subject to the same type of procedure and:

- a. a factual connection exists between the new or amended claim and the original claim; or
- b. if the opposing party consents to the amendment of the statement of claim.

<sup>2</sup> If the value of the amended action exceeds the material jurisdiction of the court, the court shall transfer the case to a court with greater material jurisdiction.

<sup>3</sup> A limitation of the action is permitted at any time; the seised court retains jurisdiction.

### **Chapter 3: Main Hearing**

#### **Art. 228** Opening party submissions

<sup>1</sup> Following the opening of the main hearing, the parties shall present their applications and state the grounds therefor.

<sup>2</sup> The court shall give them the opportunity to make a reply and rejoinder.

#### **Art. 229** New facts and evidence

<sup>1</sup> New facts and new evidence are admissible at the main hearings only if presented immediately and:

- a. if they occurred or were discovered after the exchange of written submissions or after the last instruction hearing (proper nova); or
- b. if they existed before the close of the exchange of written submissions or before the last instruction hearing but could not have been submitted despite reasonable diligence (improper nova).

<sup>2</sup> If there was neither a second round of written submissions nor an instruction hearing, new facts and new evidence may be submitted without limitation at the beginning of the main hearing.

<sup>3</sup> Where the court must establish the facts ex officio, new facts and new evidence are admitted until the court begins its deliberations.

#### **Art. 230** Amendment of the statement of claim

<sup>1</sup> An amendment of the statement of claim at the main hearings is admissible only if:

- a. the conditions under Article 227 paragraph 1 are fulfilled; and
- b. the amendment is based on new facts or new evidence.

<sup>2</sup> Article 227 paragraphs 2 and 3 apply.

#### **Art. 231** Taking of evidence

After the party submissions, the court takes the evidence.

#### **Art. 232** Closing submissions

<sup>1</sup> After the evidence is taken, the parties may comment on the result of the evidence and on the merits of the case. The plaintiff speaks first. The court shall allow the parties the opportunity for a second round of submissions.

<sup>2</sup> The parties may jointly dispense with oral closing submissions and request the submission of written party submissions. The court shall set a deadline for the same.

**Art. 233**          Dispensing with the main hearing

The parties may jointly agree to dispense with the main hearing.

**Art. 234**          Failure to attend the main hearing

<sup>1</sup> In the event that a party fails to attend the main hearing, the court shall consider the submissions made in accordance with this Code. Moreover, and subject to Article 153, it may rely on the representations of the party present and on the information on file.

<sup>2</sup> If both parties fail to attend, the proceedings are dismissed as groundless. The court costs are shared equally between the parties.

## Chapter 4: Records

**Art. 235**

<sup>1</sup> The court keeps a record of each hearing. This includes in particular:

- a. the place and time of the hearing;
- b. the composition of the court;
- c. the presence of the parties and their representatives;
- d. the prayers for relief, applications and declarations made on record by the parties;
- e. the court's rulings;
- f. the signature of the clerk.

<sup>2</sup> Statements relating to the facts of the case are placed on record unless they are already included in their written submissions. In addition, they may be recorded on tape, by video, or by other appropriate technical means.

<sup>3</sup> The court decides on applications for rectification of the record.

## Chapter 5: Decision

**Art. 236**          Final decision

<sup>1</sup> If the court is in a position to make a decision, it shall close the proceedings by deciding not to consider the merits or by making a decision on the merits.

<sup>2</sup> The court decides by majority.

<sup>3</sup> At the request of the successful party, the court shall order enforcement measures.

**Art. 237** Interim decision

<sup>1</sup> The court may issue an interim decision if a higher court could issue a contrary decision that would put an immediate end to the proceedings and thereby allow a substantial saving of time or costs.

<sup>2</sup> The interim decision may be challenged separately; it may not be challenged later together with the final decision.

**Art. 238** Content

The decision contains:

- a. the designation and the composition of the court;
- b. the place and date of the decision;
- c. the designation of the parties and their representatives;
- d. the conclusions;
- e. the persons and authorities to be served with the decision;
- f. instructions on appellate remedies unless the parties have waived their right to seek the same;
- g. the grounds for the decision, if applicable;
- h. the seal of the court.

**Art. 239** Notice to the parties and statement of grounds

<sup>1</sup> The court may give notice of the decision to the parties without providing a written statement of the grounds:

- a. at the main hearing, by handing over the written conclusions to the parties and giving an oral summary of the grounds;
- b. by serving the parties with the conclusions.

<sup>2</sup> A written statement of the grounds must be provided if one of the parties so requests within 10 days of the notice being given of the decision. If no statement of grounds is requested, the parties are deemed to have waived their right to challenge the decision by appeal or objection.

<sup>3</sup> The above is subject to the provisions of the Federal Supreme Court Act of 17 June 2005<sup>53</sup> on notice of decisions that may be referred to the Federal Supreme Court.

**Art. 240** Notice and publication of the decision

If so provided by the law or if it serves enforcement, the decision shall be published or notice shall be given to the authorities and third parties concerned.

## Chapter 6: Close of Proceedings without Decision

**Art. 241** Settlement, acceptance, withdrawal

<sup>1</sup> If notice of a settlement, acceptance of the claim or withdrawal of the action is placed on record in court, the parties must sign the record.

<sup>2</sup> A settlement, acceptance of the claim or withdrawal of the action has the same effect as a binding decision.

<sup>3</sup> The court shall dismiss the proceedings.

**Art. 242** Proceedings made groundless for other reasons

If for any other reasons the proceedings end without a decision, the proceedings shall be dismissed.

### Title 4: Simplified Proceedings

**Art. 243** Scope of application

<sup>1</sup> Simplified proceedings apply in financial disputes with a value in dispute not exceeding 30,000 francs.

<sup>2</sup> They apply regardless of the amount in dispute to:

- a. disputes under the Gender Equality Act of 24 March 1995<sup>54</sup>;
- b. disputes concerning violence, threats or stalking under Article 28b Civil Code<sup>55</sup>;
- c. disputes concerning the tenancy and lease of residential and business property or the lease of agricultural property if they concern the deposit of rent, protection against abusive rent, protection against termination, or the extension of the rental relationship;
- d. disputes concerning the right of access to personal data provided by the Federal Act of 19 June 1992<sup>56</sup> on Data Protection;
- e. disputes concerning the Participation Act of 17 December 1993<sup>57</sup>;
- f. disputes concerning insurance supplementary to the social health insurance under the Federal Act of 18 March 1994<sup>58</sup> on Health Insurance.

<sup>3</sup> The simplified proceedings do not apply to disputes before the court of sole cantonal instance in accordance with Articles 5 and 8 and before the Commercial Court in accordance with Article 6.

<sup>54</sup> SR 151.1

<sup>55</sup> SR 210

<sup>56</sup> SR 235.1

<sup>57</sup> SR 822.14

<sup>58</sup> SR 832.10

**Art. 244** Simplified statement of claim

<sup>1</sup> The statement of claim may be filed in the forms provided for by Article 130 or orally on record before the court. It shall contain:

- a. the designation of the parties;
- b. the prayers for relief;
- c. a description of the matter in dispute;
- d. a statement of the value in dispute, if necessary;
- e. the date and signature.

<sup>2</sup> A statement of the grounds for the claim is not necessary.

<sup>3</sup> The following must be filed together with the statement of claim:

- a. a power of attorney in case of representation;
- b. the authorisation to proceed or the declaration that conciliation has been waived;
- c. the available physical records.

**Art. 245** Summons to a hearing and statement of defence

<sup>1</sup> If no grounds are stated for the action, the court shall serve the defendant with the statement of claim and summon the parties to a hearing.

<sup>2</sup> If the grounds for the action are stated, the court shall first set a deadline for the defendant to file a written response to the claim.

**Art. 246** Procedural rulings

<sup>1</sup> The court shall make the required procedural rulings so that if possible the matter may be concluded at the first hearing.

<sup>2</sup> If the circumstances so require, the court may order an exchange of written submissions and hold instruction hearings.

**Art. 247** Establishment of facts

<sup>1</sup> By asking the appropriate questions, the court shall cause the parties to complete inadequate submissions and to designate the evidence.

<sup>2</sup> In the following cases, the court shall establish the facts ex officio:

- a. in matters under Article 243 paragraph 2;
- b. if the value in dispute does not exceed 30,000 francs:
  1. in other disputes concerning the tenancy and lease of residential and business property or the lease of agricultural property;
  2. in other employment law disputes.

## Title 5: Summary Proceedings

### Chapter 1: Scope of Application

#### Art. 248 Principle

Summary proceedings may be brought:

- a. in the cases designated by law;
- b. for legal protection in clear cases;
- c. for court injunctions;
- d. for interim measures;
- e. for non-contentious matters.

#### Art. 249 Civil Code

Summary proceedings may be brought in particular in the following cases:

- a.<sup>59</sup> Law of persons:
  1. fixing a time limit for legal transactions by minors or persons subject to a general deputyship (Art. 19a CC)
  2. right of reply (Art. 281 CC),
  2. declaration of presumed death (Art. 35–38 CC),
  3. rectification of the civil status registry (Art. 42 CC);
- b. ...<sup>60</sup>
- c. Law of succession:
  1. acceptance of an oral will (Art. 507 CC),
  2. provision of security when inheriting from a person presumed dead (Art. 546 CC),
  3. deferring the division of the estate and ordering measures to secure the claims of the co-heirs towards an insolvent heir (Art. 604 para. 2 and 3 CC);
- d. Property law:
  1. measures to preserve the value and the serviceability of an object in joint property (Art. 647 para. 2 no. 1 CC),
  2. registration of real titles in case of extraordinary adverse possession (Art. 662 CC),
  3. dismissal of an objection to the disposal of a condominium unit (Art. 712c para. 3 CC),

<sup>59</sup> Amended by Annex 2 No 3, in force since 1 Jan. 2013 (AS **2010** 1739; BBl **2006** 7221; AS **2011** 725; BBl **2006** 7001).

<sup>60</sup> Repealed by Annex 2 No 3, with effect from 1 Jan. 2013 (AS **2010** 1739; BBl **2006** 7221; AS **2011** 725; BBl **2006** 7001).



4. appointment and removal of the condominium administrator (Art. 712*q* and 712*r* CC),
5. provisional registration of statutory mortgages (Art. 712*i*, 712*d*, 779*k* and 837–839 CC),
6. setting a deadline to provide security and order the dispossession in case of usufruct (Art. 760 and 762 CC),
7. ordering the liquidation of debts in a usufructuary estate (Art. 766 CC),
8. measures in favour of the creditor to protect the value of the real estate security interest (Art. 808 para. 1 and 2 and Art. 809–811 CC),
- 9.<sup>61</sup> appointing an authorised agent on the issue of a mortgage certificate (Art. 850 para. 3 CC),
- 10.<sup>62</sup> cancellation of a mortgage certificate (Art. 856 and 865 CC),
11. noting of restrictions on powers of disposal and provisional entries in disputed cases (Art. 960 para. 1 sec. 1, 961 para. 1 sec. 1 and 966 para. 2 CC).

#### **Art. 250** Code of Obligations

Summary proceedings may be brought in particular in the following cases:

- a. General provisions:
  1. deposit of an expired power of attorney with the court (Art. 36 para. 1 CO<sup>63</sup>),
  2. setting a reasonable deadline to provide security (Art. 83 para. 2 CO),
  3. deposit and sale of an object for the event of an obligee's default (Art. 92 para. 2 and 93 para. 2 CO),
  4. authorisation for performance by a third party (Art. 98 CO),
  5. setting a time limit to perform a contract (Art. 107 para. 1<sup>64</sup> CO),
  6. deposit of an amount in dispute (Art. 168 para. 1 CO);
- b. Specific contracts:
  1. designation of an expert to verify the calculation of the profit share or commissions (Art. 322*a* para. 2 and 322*c* para. 2 CO),
  2. setting a deadline to provide security in the event that a salary is at risk (Art. 337*a* CO),
  3. setting a time limit in the case of non-contractual performance of work (Art. 366 para. 2 CO),

<sup>61</sup> Amended in accordance with No II 3 of the Federal Act of 11 Dec. 2009 (Register Mortgage Certificate and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBI 2007 5283).

<sup>62</sup> Amended in accordance with No II 3 of the Federal Act of 11 Dec. 2009 (Register Mortgage Certificate and other amendments to Property Law), in force since 1 Jan. 2012 (AS 2011 4637; BBI 2007 5283).

<sup>63</sup> SR 220

<sup>64</sup> Corrected by the Federal Assembly Drafting Committee (Art. 58 para. 1 ParLA – SR 171.10).

4. appointment of an expert to inspect the work (Art. 367 CO),
  5. setting a time limit for the publication of a new edition of a literary or artistic work (Art. 383 para. 3 CO),
  6. return of an object held by an official receiver (Art. 480 CO),
  7. assessing the extent of cover by pledge in the case of joint and several surety (Art. 496 para. 2 CO),
  8. abandonment of debt enforcement proceedings against the guarantor furnishing real security (Art. 501 para. 2 CO),
  9. provision of security by the principal debtor and release from liability (Art. 506 CO);
- c. Company law:
1. provisional withdrawal of the authority to represent (Art 565 para. 2, 603 and 767 para. 1 CO),
  2. appointment of a joint representative (Art. 690 para. 1, 764 para. 2, 792 sec. 1 and 847 para. 4 CO),
  3. appointment, dismissal and replacement of liquidators (Art. 583 para. 2, 619, 740, 741, 770, 826 para. 2 and 913 CO),
  4. sale at an overall sale price and modalities of sale of immovable property (Art. 585 para. 3 and 619 CO),
  5. appointment of an expert to verify the profit and loss account and the balance sheet of the limited partnership (Art. 600 para. 3 CO),
  6. allowing a period of time in the case of insufficient number of members or lack of corporate bodies (Art. 731*b*, 819 and 908 CO),
  7. disclosure of information to shareholders and creditors of a company limited by shares, the members of a limited liability company and members of a cooperative (Art. 697 para. 4, 697*h* para. 2, 802 para. 4 and 857 para. 3 CO),
  8. special audit of a company limited by shares (Art. 697*a* to 697*g* CO),
  9. convening a general meeting of the shareholders of a company limited by shares or the members of a cooperative, putting an item on the agenda and calling the assembly of the members of a limited liability company (Art. 699 para. 4, 805 para. 5 sec. 2 and 881 para. 3 CO),
  10. designation of a representative of the company or the cooperative in the event of a resolution of the general meeting being challenged by the management (Art. 706*a* para. 2, 808*c* and 891 para. 1 CO),
  11. appointment and removal of the auditors (Art. 731*b* CO),
  12. deposit of amounts of claims in case of liquidation (Art. 744, 770, 826 para. 2 and 913 CO),
  13. removal of the directors and auditors of a cooperative (Art. 890 para. 2 CO);
- d. Securities law:
1. cancellation of securities (Art. 981 CO),

2. prohibition of paying a bill of exchange and deposit of the amount payable under the bill (Art. 1072 CO),
3. lapse of the authority conferred by the creditors meeting on the representative of the community of creditors (Art. 1162 para. 4 CO),
4. convening a creditors meeting on the application by the bond creditors (Art. 1165 para. 3 and 4 CO).

**Art. 251** Debt Enforcement and Bankruptcy Act of 11 April 1889

The summary proceedings may be brought in particular in the following cases:

- a. decisions made in matters of clearance to proceed, bankruptcy, attachment and composition;
- b. admission of a belated objection (Art. 77 para. 3 DEBA<sup>65</sup>) and of the objection in the enforcement of bills of exchange (Art. 181 DEBA);
- c. revocation or suspension of the debt collection proceedings (Art. 85 DEBA);
- d. decision on the existence of new assets (Art. 265a para. 1–3 DEBA);
- e. ordering the separation of property (Art. 68b DEBA).

## Chapter 2: Procedure and Decision

**Art. 252** Application

<sup>1</sup> An application must be made to initiate proceedings.

<sup>2</sup> The application must be filed in accordance with Article 130; in simple or urgent cases, it may be filed orally on record.

**Art. 253** Answer

If the request does not seem obviously inadmissible or unfounded, the court shall give the opposing party the opportunity to comment orally or in writing.

**Art. 254** Evidence

<sup>1</sup> Evidence must be provided in the form of physical records.

<sup>2</sup> Other evidence is admissible in the following cases:

- a. if the taking of evidence does not substantially delay the proceedings;
- b. if required by the purpose of the proceedings; or
- c. if the court must establish the facts ex officio.

**Art. 255** Principle of ex-officio investigation

The court establishes the facts ex officio:

- a. in matters of bankruptcy and composition;
- b. in non-contentious matters.

**Art. 256** Decision

<sup>1</sup> The court may dispense with a hearing and decide on the basis of the case files, unless the law provides otherwise.

<sup>2</sup> If an order in a non-contentious matter retrospectively proves incorrect, it may be cancelled or modified ex officio or on request, provided this does not conflict with the law or the principle of legal certainty.

**Chapter 3: Clear Cases****Art. 257**

<sup>1</sup> The court shall declare the case admissible under the summary procedure where:

- a. the facts are undisputed or immediately provable; and
- b. the legal situation is clear.

<sup>2</sup> The case is subject to the principle of ex-officio assessment.

<sup>3</sup> If the case is not admissible under the foregoing procedure, the court does not consider the case.

**Chapter 4: Court Injunction****Art. 258** Principle

<sup>1</sup> Any person who holds title to immovable property may request the court to prohibit any trespass on the property and, on request, to impose a fine not exceeding 2,000 francs on any person who violates the injunction. The injunction may be temporary or indefinite.

<sup>2</sup> The applicant must prove his or her real title by means of physical records and credibly show a current or imminent trespass.

**Art. 259** Notice

Notice of the injunction must be published and affixed to the property in an easily visible sign.

**Art. 260** Opposition

<sup>1</sup> Any person who is not prepared to recognise the injunction may file an opposition with the court within 30 days of notice thereof being given by publication and at the property. The opposition needs no statement of grounds.

<sup>2</sup> Opposition renders the injunction ineffective towards the opposing person. In order to validate the injunction, an action must be filed in court.

**Chapter 5: Interim Measures and Protective Letter****Section 1: Interim Measures****Art. 261** Principle

<sup>1</sup> The court shall order the interim measures required provided the applicant shows credibly that:

- a. a right to which he or she is entitled has been violated or a violation is anticipated; and
- b. the violation threatens to cause not easily reparable harm to the applicant.

<sup>2</sup> The court may refrain from ordering interim measures if the opposing party provides appropriate security.

**Art. 262** Subject matter

The court may order any interim measure suitable to prevent the imminent harm, in particular:

- a. an injunction;
- b. an order to remedy an unlawful situation;
- c. an order to a register authority or to a third party;
- d. performance in kind;
- e. the payment of a sum of money in the cases provided by the law.

**Art. 263** Measures ordered before the action becomes pending

If the principal action is not yet pending, the court shall set a deadline within which the applicant must file his or her action, subject to the ordered measure becoming automatically ineffective in the event of default.

**Art. 264** Security and damages

<sup>1</sup> The court may make the interim measure conditional on the payment of security by the applicant if it is anticipated that the measures may cause loss or damage to the opposing party.

<sup>2</sup> The applicant is liable for any loss or damage caused by unjustified interim measures. If the applicant proves, however, that he or she applied for the measures in good faith, the court may reduce the damages or entirely release the applicant from liability.

<sup>3</sup> The security must be released once it is established that no action for damages will be filed; in case of uncertainty, the court shall set a deadline for filing the action.

**Art. 265** Ex-parte interim measures

<sup>1</sup> In cases of special urgency, and in particular where there is a risk that the enforcement of the measure will be frustrated, the court may order the interim measure immediately and without hearing the opposing party.

<sup>2</sup> At the same time, the court shall summon the parties to a hearing, which must take place immediately, or set a deadline for the opposing party to comment in writing. Having heard the opposing party, the court shall decide on the application immediately.

<sup>3</sup> Before ordering interim measures, the court may ex officio order the applicant to provide security.

**Art. 266** Measures against the media

The court may order interim measures against periodically published media only if:

- a. the imminent violation of rights may cause the applicant a particularly serious disadvantage;
- b. the violation is obviously not justified; and
- c. the measure does not seem disproportionate.

**Art. 267** Enforcement

The court that orders the interim measure shall also take the required enforcement measures.

**Art. 268** Modification and revocation

<sup>1</sup> The interim measures may be modified or revoked if the circumstances have changed or if the measures have proven unjustified.

<sup>2</sup> The measures become automatically ineffective when the decision on the merits comes into force. The court may order their continuation if it serves the enforcement of the decision or if the law so provides.

**Art. 269** Reservation

The following provisions are reserved:

- a. the provisions of the DEBA<sup>66</sup> on protective measures when enforcing monetary claims;
- b. the provisions of the Civil Code<sup>67</sup> on protective measures in succession;
- c. the provisions of the Patents Act of 25 June 1954<sup>68</sup> on the action relating to the granting of a licence.

## **Section 2: Protective Letter**

### **Art. 270**

<sup>1</sup> Any person who has reason to believe that an ex-parte interim measure, an attachment under Articles 271–281 DEBA<sup>69</sup> or any other measure against him or her will be applied for without prior hearing, may set out his or her position in advance by filing a protective letter.<sup>70</sup>

<sup>2</sup> The opposing party shall be served with the protective letter only if he or she initiates the relevant proceedings.

<sup>3</sup> The protective letter becomes ineffective six months after it is filed.

## **Title 6: Special Proceedings in Marital Law**

### **Chapter 1: Summary Proceedings**

#### **Art. 271** Scope of Application

Subject to Articles 272 and 273, summary procedure applies to measures for protection of the marital union, and in particular to:

- a. the measures under Articles 172–179 CC<sup>71</sup>;
- b. the extension of a spouse's power to represent the marital union (Art. 166 para. 2 sec. 1 CC);
- c. the authorisation of a spouse to dispose of the family home (Art. 169 para. 2 CC);
- d. the duty of a spouse to provide information on his or her income, assets and debts (Art. 170 para. 2 CC);
- e. the separation of property and the reinstatement of the prior property regime (Art. 185, 187 para. 2, 189 and 191 CC);

<sup>66</sup> SR **281.1**

<sup>67</sup> SR **210**

<sup>68</sup> SR **232.14**

<sup>69</sup> SR **281.1**

<sup>70</sup> Amended in accordance with Art. 3 No 1 of the Federal Decree of 11 Dec. 2009 (Adoption and Implementation of the Lugano Convention), in force since 1 Jan. 2011 (AS **2010** 5601; BBl **2009** 1777).

<sup>71</sup> SR **210**

- f. the obligation of spouses to cooperate in drawing up an inventory (Art. 195a CC);
- g. the determination of payment deadlines and the provision of security between the spouses outside proceedings on the division of the marital property (Art. 203 para. 2, 218, 235 para. 2 and 250 para. 2 CC);
- h. the spouse's consent to the renunciation or acceptance of an inheritance (Art. 230 para. 2 CC);
- i. directions to debtors and the provision of security for post-matrimonial maintenance outside proceedings on post-matrimonial maintenance (Art. 132 CC).

**Art. 272** Principle of ex-officio investigation

The court establishes the facts ex officio.

**Art. 273** Procedure

<sup>1</sup> The court shall hold a hearing. It may dispense with the hearing only if the parties' submissions indicate that the facts are clear or undisputed.

<sup>2</sup> The parties must appear in person if the court does not exempt them for reasons of illness or age or for other good cause.

<sup>3</sup> The court shall attempt to find an agreement between the parties.

## **Chapter 2: Divorce Proceedings**

### **Section 1: General Provisions**

**Art. 274** Initiation

Divorce proceedings are initiated by submitting a joint request for divorce or by filing an action for divorce.

**Art. 275** Suspension of the common household

Each spouse has the right to suspend the common household for the duration of the divorce proceedings.

**Art. 276** Interim measures

<sup>1</sup> The court shall order the necessary interim measures. The provisions concerning measures for protection of the marital union apply by analogy.

<sup>2</sup> Interim measures ordered by the court for the protection of the marital union shall be continued. The divorce court has jurisdiction to modify or revoke them.

<sup>3</sup> The court may also order interim measures after the dissolution of the marriage if proceedings relating to the effects of the divorce continue.



**Art. 277** Establishment of facts

<sup>1</sup> The principle of production of evidence applies in proceedings concerning the dissolution of the marital property regime and post-marital maintenance.

<sup>2</sup> If the court establishes that physical records required to decide the financial consequences of the divorce are missing, it shall order the parties to produce such documents.

<sup>3</sup> The court shall otherwise establish the facts *ex officio*.

**Art. 278** Personal appearance

The parties must appear in person at the hearing unless the court exempts them for reasons of illness or age or for other good cause.

**Art. 279** Approval of the agreement

<sup>1</sup> The court shall approve the agreement on the effects of the divorce if it is persuaded that the spouses have concluded the agreement of their own volition and after careful reflection, and that the agreement is clear, complete and not manifestly inequitable; the provisions on occupational pensions are reserved.

<sup>2</sup> The agreement is valid only when it has been approved by the court. It must be included in the conclusions to the decision.

**Art. 280** Agreement on occupational pension benefits

<sup>1</sup> The court shall approve an agreement on the division of the withdrawal benefits from the occupational pension fund provided:

- a. the spouses have agreed on the shares and the modalities of the division;
- b. the occupational pension schemes concerned confirm the amount of the entitlements and that the agreement is practicable;
- c. the court is persuaded that the agreement conforms to the law.

<sup>2</sup> The court shall inform the pension schemes concerned about the relevant parts of the final decision, including the details required in order to transfer of the agreed amounts. The decision is binding on the pension schemes.

<sup>3</sup> If the agreement provides for one of the spouses to wholly or partly renounce his or her entitlement, the court shall examine *ex officio* whether the renouncing spouse is guaranteed equivalent financial security for age or invalidity through other means.

**Art. 281** Failure to agree on the division of withdrawal benefits

<sup>1</sup> In the absence of an agreement, and if the relevant withdrawal benefits have been determined, the court shall decide on the apportionment of the shares according to the provisions of the Civil Code<sup>72</sup> (Art. 122 and 123 CC in conjunction with Art. 22

<sup>72</sup> SR 210

and 22a of the Vested Benefits Act of 17 December 1993<sup>73</sup>), determine the amount to be transferred and set a deadline for the pension funds concerned to confirm the practicability of the planned arrangement.

<sup>2</sup> Article 280 paragraph 2 applies by analogy.

<sup>3</sup> In the other cases, after the final decision on the apportionment of the shares, the court shall refer the matter to the competent court under the Vested Benefits Act of 17 December 1993, advising it in particular of:

- a. the decision on the apportionment of the shares;
- b. the date of marriage and the date of divorce;
- c. the pension funds against which the spouses are likely to have entitlements;
- d. the amount of the spouses' entitlements that these funds have reported.

**Art. 282** Maintenance payments

<sup>1</sup> The agreement or decision fixing the maintenance payments must indicate:

- a. the portions of the income and the assets of each spouse that have been taken into account;
- b. the amount allocated to the spouse and to each child;
- c. the amount necessary to assure the proper maintenance of the entitled spouse, if a subsequent increase in the pension is reserved;
- d. whether and to what extent the pension will be adjusted to changes in living costs.

<sup>2</sup> If the maintenance payment for the spouse is challenged, the appellate court may also reassess the maintenance payments for the children, even if they are not challenged.

**Art. 283** Unity of decision

<sup>1</sup> The court rules on the effects of the divorce in the divorce judgment.

<sup>2</sup> Where there is good cause, the division of the marital property may be referred to separate proceedings.

**Art. 284** Adjusting the binding effects of divorce

<sup>1</sup> The conditions and the material jurisdiction for adjusting a decision are governed by Articles 129 and 134 CC<sup>74</sup>.

<sup>2</sup> Non-contentious modifications may be agreed in a simple written agreement, subject to the provisions of the Civil Code concerning matters relating to children (Art. 134 para. 3 CC).

<sup>73</sup> SR 831.42

<sup>74</sup> SR 210

<sup>3</sup> The provisions on the divorce action apply by analogy to the proceedings for contentious modifications.

## **Section 2: Divorce at Joint Request**

**Art. 285** Submission in the case of comprehensive agreement

The joint submission of the spouses contains:

- a. the names and addresses of the spouses and details of their representatives, if any;
- b. the joint divorce request;
- c. the comprehensive agreement on the effects of the divorce;
- d. the joint applications with regard to the children;
- e. the necessary documents;
- f. the date and signatures.

**Art. 286** Submission in the case of partial agreement

<sup>1</sup> In their submission, the spouses must apply for the court to rule on the effects of divorce on which they have not reached an agreement.

<sup>2</sup> Each spouse may submit his or her justified application on the effects of the divorce that are not part of the agreement.

<sup>3</sup> Otherwise Article 285 applies by analogy.

**Art. 287<sup>75</sup>** Hearing of the parties

If the submission is complete, the court shall summon the parties to a hearing. The conduct of the hearing is governed by the provisions of the Civil Code<sup>76</sup>.

**Art. 288** Continuation of the proceedings and decision

<sup>1</sup> If the conditions for a divorce at joint request are fulfilled, the court shall decree the divorce and approve the agreement.

<sup>2</sup> If the effects of the divorce remain disputed, the proceedings shall be continued with regard to these effects under adversarial procedure.<sup>77</sup> The court may assign the roles of plaintiff and defendant.

<sup>75</sup> Amended in accordance with No II of the Federal Act of 25 Sept. 2009 (Period for reflection in Divorce Proceedings on Joint Application), in force since 1 Jan. 2011 (AS 2010 281 1861; BBl 2008 1959 1975).

<sup>76</sup> SR 210

<sup>77</sup> Amended in accordance with No II of the Federal Act of 25 Sept. 2009 (Period for reflection in Divorce Proceedings on Joint Application), in force since 1 Jan. 2011 (AS 2010 281 1861; BBl 2008 1959 1975).

<sup>3</sup> If the requirements for divorce at joint request are not met, the court shall reject the joint request for divorce and at the same time set a deadline to each spouse for the filing of a divorce action.<sup>78</sup> The proceedings remain pending during this period and any interim measures continue to apply.

**Art. 289** Appellate remedies

The divorce may only be contested by appeal on the grounds of lack of intent.

**Section 3: Action for Divorce**

**Art. 290** Filing the action

An action for divorce may be filed without a written statement of the grounds. It shall contain:

- a. the names and addresses of the spouses and the designation of their representatives, if any;
- b. the prayer for relief requesting the divorce and an indication of the grounds (Art. 114 or 115 CC<sup>79</sup>);
- c. the prayers for relief concerning the financial effects of the divorce;
- d. the prayers for relief concerning the children;
- e. the necessary documents;
- f. the date and signatures.

**Art. 291** Conciliation hearing

<sup>1</sup> The court shall summon the parties to a hearing and establish whether there are grounds for divorce.

<sup>2</sup> If grounds for divorce are established, the court shall attempt to secure an agreement between the spouses with regard to the effects of the divorce.

<sup>3</sup> If grounds for divorce are not established or if an agreement cannot be reached, the court shall set a deadline for the plaintiff to submit a written statement of grounds for the action. In the event of default, the proceedings shall be dismissed as groundless.

**Art. 292** Change to divorce at joint request

<sup>1</sup> The proceedings shall continue according to the provisions on divorce at joint request if the spouses:

<sup>78</sup> Amended in accordance with No II of the Federal Act of 25 Sept. 2009 (Period for reflection in Divorce Proceedings on Joint Application), in force since 1 Jan. 2011 (AS 2010 281 1861; BBl 2008 1959 1975).

<sup>79</sup> SR 210

- a. have been separated for less than two years at the time the case becomes pending; and
- b. agree to the divorce.

<sup>2</sup> If the grounds for divorce claimed are established, no change to proceedings for divorce at joint request is made.

**Art. 293**          Amendment of the action

A divorce action may be changed to a separation action at any time prior to the court beginning its deliberations on the decision.

**Section 4:    Actions for Annulment and Separation**

**Art. 294**

<sup>1</sup> The procedure for actions for annulment and for separation is governed by analogy by the provisions on actions for divorce.

<sup>2</sup> An action for separation may be transformed into an action for divorce at any time prior to the court beginning deliberations on the decision.

**Title 7:        Proceedings relating to Children in Family Law Matters**

**Chapter 1:    General Provisions**

**Art. 295**          Principle

Independent actions are decided in simplified proceedings.

**Art. 296**          Principles of ex-officio investigation and assessment

<sup>1</sup> The court shall investigate the facts ex officio.

<sup>2</sup> The parties and third parties must cooperate in the tests required to establish paternity provided such tests not pose a danger to their health. The provisions concerning the parties' and third parties' right to refuse are not applicable.

<sup>3</sup> The court decides without being bound by the requests of the parties.

**Chapter 2:    Proceedings in Marital law**

**Art. 297**          Hearing of the parents and mediation

<sup>1</sup> The court hears the parents in person when ruling on matters relating to a child.

<sup>2</sup> The court may ask the parents to attempt mediation.

**Art. 298** Hearing the child

<sup>1</sup> The child is heard in person and in an appropriate way by the court or by a third party appointed for this purpose, to the extent that the child's age or other good cause does not preclude a hearing.

<sup>2</sup> Only the information that is relevant for the decision is placed on record. This information shall be communicated to the parents or the child's welfare agent.

<sup>3</sup> A child who has the capacity to consent may contest the refusal to grant a hearing by filing an objection.

**Art. 299** Appointing a representative for the child

<sup>1</sup> If necessary, the court shall appoint a person experienced in welfare and legal matters to act as welfare agent for the child.

<sup>2</sup> The court shall consider appointing a representative in particular if:

- a. the parents submit different prayers for relief regarding allocation of custody or care or other important questions concerning their personal relations with the child;
- b.<sup>80</sup> the child protection authority or one of the parents so requests;
- c. based on hearing with the parents or the child or based on other reasons, the court:
  1. has serious doubts about the parents' joint applications relating to the allocation of custody or care or the manner in which the personal relations should be dealt with, or
  2. is considering ordering measures for the protection of the child.

<sup>3</sup> If the child with the capacity to consent so requests, a representative must be appointed. The child may challenge the rejection of his or her request by filing an objection.

**Art. 300** Competence of the representative

The child's representative may file applications and appellate remedies to the extent they concern:

- a. the allocation of the custody or care;
- b. important questions of personal relations;
- c. measures for the protection of the child.

**Art. 301** Notice of the decision

Notice of the decision is given:

- a. to the parents;

<sup>80</sup> Amended by Annex 2 No 3, in force since 1 Jan. 2013 (AS **2010** 1739; BBI **2006** 7221; AS **2011** 725; BBI **2006** 7001).

- b. to the child, if he or she is at least 14 years old;
- c. to the welfare agent, if any, to the extent the decision concerns the allocation of custody or care or important questions of personal relations or measures for the protection of the child.

### **Chapter 3: Summary Procedure**

#### **Art. 302** Scope of application

<sup>1</sup> Summary procedure applies in particular in the case of:

- a. decisions under the Hague Convention of 25 October 1980<sup>81</sup> on the Civil Aspects of International Child Abduction and under the European Convention of 20 May 1980<sup>82</sup> on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children;
- b. the payment of an special financial contribution to cover unforeseen extraordinary needs of the child (Art. 286 para. 3 CC<sup>83</sup>);
- c. notice to debtors and the provision of security for child support outside proceedings on the parents' maintenance obligations (Art. 291 and 292 CC).

<sup>2</sup> The provisions of the Federal Act of 21 December 2007<sup>84</sup> on International Child Abduction and the Hague Conventions on the Protection of Children and Adults are reserved.

### **Chapter 4: Maintenance and Paternity Actions**

#### **Art. 303** Interim measures

<sup>1</sup> If paternity is established, the defendant may be ordered to deposit or advance appropriate amounts for the maintenance of the child.

<sup>2</sup> If the action for maintenance has been filed together with the paternity action, the defendant must, at the plaintiff's request:

- a. deposit the costs for the birth and the suitable contributions towards the maintenance of mother and child provided paternity has been shown credibly;
- b. make suitable contributions towards the maintenance of the child support provided must be assumed and the assumption cannot be refuted by immediately available evidence.

81 SR 0.211.230.02

82 SR 0.211.230.01

83 SR 210

84 SR 211.222.32

**Art. 304** Jurisdiction

The court that has jurisdiction to decide the paternity action shall also decide on the deposit, the advance payment, the disbursement of deposited amounts and the refund of advances.

**Title 8: Proceedings relating to Same-Sex Partnerships****Chapter 1: Summary Procedure****Art. 305** Scope of application

Summary procedure applies to:

- a. the determination of monetary contributions to the maintenance of the partnership and the notice to debtors (Art. 13 para. 2 and 3 of the Same-Sex Partnerships Act of 18 June 2004<sup>85</sup>, SSPA);
- b. the authorisation of a partner to dispose of the common home (Art. 14 para. 2 SSPA);
- c. the expansion and revocation of a partner's power to represent the partnership (Art. 15 para. 2 lt. a and para. 4 SSPA);
- d. the obligation of a partner to provide information on his or her income, assets and debts (Art. 16 para. 2 SSPA);
- e. the determination, adjustment or cancellation of monetary contributions and the regulation of the use of the home and the household effects (Art. 17 para. 2 and 4 SSPA);
- f. the obligation of the partners to cooperate in taking an inventory (Art. 20 para. 1 SSPA);
- g. the restriction of a partner's power to dispose of certain assets (Art. 22 para. 1 SSPA);
- h. the granting of deadlines for the repayment of debts between the partners (Art. 23 para. 1 SSPA).

**Art. 306** Procedure

Articles 272 and 273 apply by analogy to the procedure.

**Chapter 2: Dissolution and Annulment of Same-Sex Partnerships****Art. 307**

The provisions concerning the divorce proceedings apply by analogy to the dissolution and annulment of same-sex partnerships.

<sup>85</sup> SR 211.231



**Title 9: Appellate Remedies****Chapter 1: Appeal****Section 1: Decisions that may be contested and Grounds for Appeal****Art. 308** Decisions that may be contested

<sup>1</sup> An appeal is admissible against:

- a. final and interim decisions of first instance;
- b. decisions of first instance on interim measures.

<sup>2</sup> In financial matters, an appeal is admissible only if the value of the claim in the most recent prayers for relief is at least 10,000 francs.

**Art. 309** Exceptions

An appeal is not admissible:

- a. against decisions of the enforcement court;
- b. in the following matters under the DEBA<sup>86</sup>:
  1. revocation of the stay of enforcement (Art. 57d DEBA);
  2. admission of a time-barred objection (Art. 77 para. 3 DEBA);
  3. clearance to proceed (Art. 80–84 DEBA);
  4. revocation or suspension of the debt enforcement proceedings (Art. 85 DEBA);
  5. admission of the objection in the collection of bills of exchange (Art. 181 DEBA);
  - 6.<sup>87</sup> attachment (Art. 272 and 278 DEBA);
  - 7.<sup>88</sup> decisions falling under the jurisdiction of the bankruptcy or composition court under the DEBA.

**Art. 310** Grounds for appeal

The appeal may be filed on grounds of:

- a. incorrect application of the law;
- b. incorrect establishment of the facts.

<sup>86</sup> SR 281.1

<sup>87</sup> Amended in accordance with Art. 3 No 1 of the Federal Decree of 11 Dec. 2009 (Approval and Implementation of the Lugano Convention), in force since 1 Jan. 2011 (AS 2010 5601; BBI 2009 1777).

<sup>88</sup> Inserted by Art. 3 No 1 of the Federal Decree of 11 Dec. 2009 (Approval and Implementation of the Lugano Convention), in force since 1 Jan. 2011 (AS 2010 5601; BBI 2009 1777).

## Section 2: Appeals, Answers to the Appeal and Cross Appeals

### Art. 311 Filing of appeal

<sup>1</sup> The appeal must be filed in writing and with a statement of the grounds with the appellate court within 30 days of service of a decision and grounds therefor or the subsequent service of the statement of grounds (Art. 239).

<sup>2</sup> The appealed decision must be appended to with the appeal.

### Art. 312 Answer to the appeal

<sup>1</sup> The appellate court serves the appeal on the opposing party for its written comments, unless the appeal is obviously inadmissible or obviously unfounded.

<sup>2</sup> An answer to the appeal must be filed within 30 days.

### Art. 313 Cross appeal

<sup>1</sup> The opposing party may file a cross appeal together with the answer to the appeal.

<sup>2</sup> The cross appeal lapses if:

- a. the appellate court declares the principal appeal inadmissible;
- b. the principal appeal is dismissed because it is obviously unfounded;
- c. the principal appeal is withdrawn before the beginning of deliberations.

### Art. 314 Summary proceedings

<sup>1</sup> If the decision was rendered in summary proceedings, the deadline for filing the appeal and the answer to appeal is in each case 10 days.

<sup>2</sup> A cross appeal is not admissible.

## Section 3: Effects and Procedure of an Appeal

### Art. 315 Suspensive effect

<sup>1</sup> The legal effect and enforceability of those parts of the contested decision to which the applications in the appeal relate shall be suspended.

<sup>2</sup> The appellate court may authorise early enforcement. If necessary, it shall order protective measures or the provision of security.

<sup>3</sup> Suspensive effect may not be revoked when the appeal is against a judgment for modification of legal relationships.

<sup>4</sup> The appeal does not have suspensive effect if it is filed against a decision on:

- a. the right of reply;
- b. interim measures.

<sup>5</sup> The enforcement of interim measures may be suspended in extraordinary circumstances if the party concerned is threatened with not easily reparable harm.

**Art. 316** Procedure before the appellate court

<sup>1</sup> The appellate court may hold a hearing or decide on the basis of the case files.

<sup>2</sup> It may order a second exchange of written submissions.

<sup>3</sup> It may take evidence.

**Art. 317** New facts and new evidence; Amendment of claim

<sup>1</sup> New facts and new evidence are considered only if:

- a. they are submitted immediately; and
- b. they could not have been submitted in the first instance despite reasonable diligence.

<sup>2</sup> The amendment of the claim is admissible only if:

- a. the conditions under Article 227 paragraph 1 are fulfilled; and
- b. the amendment is based on new facts or new evidence.

**Art. 318** Decision

<sup>1</sup> The appellate court may:

- a. confirm the challenged decision;
- b. make a new decision; or
- c. remit the case to the first instance if:
  1. an essential part of the claim was not considered; or
  2. essential issues of fact must still be established.

<sup>2</sup> The appellate court shall give notice of its decision to the parties with a written statement of grounds.

<sup>3</sup> If the appellate court makes a new decision, it shall also decide on the costs at first instance.

## **Chapter 2: Objections**

**Art. 319** Object of objection

An objection is admissible against:

- a. final and interim decisions and decisions on interim measures of first instance that are not subject to appeal;

- b. other decisions and procedural rulings of first instance:
  - 1. in the cases provided by the law,
  - 2. if they threaten to cause not easily reparable harm;
- c. undue delay by the court.

**Art. 320** Grounds for an objection

An objection is admissible on the following grounds:

- a. incorrect application of the law;
- b. obviously incorrect establishment of the facts.

**Art. 321** Filing an objection

<sup>1</sup> The objection must be filed in writing and with a statement of grounds with the appellate court within 30 days of service of a decision and grounds therefor or of the subsequent service of the statement of the grounds (Art. 239).

<sup>2</sup> If the objection is against a decision taken in summary proceedings or against a procedural ruling, it must be filed within 10 days unless the law provides otherwise.

<sup>3</sup> The contested decision or procedural ruling must be enclosed if it has been served on the party.

<sup>4</sup> The objection on the grounds of undue delay may be filed at any time.

**Art. 322** Answer to the objection

<sup>1</sup> The appellate court serves the objection on the opposing party so that he or she may comment in writing thereon, unless the objection is obviously inadmissible or obviously unfounded.

<sup>2</sup> The answer to the objection must be filed within the same period as applies to the objection.

**Art. 323** Cross objections

Cross objections are not admissible.

**Art. 324** Comments of the lower court

The appellate court may invite the lower court to comment.

**Art. 325** Suspensive effect

<sup>1</sup> The objection does not suspend the legal effect and enforceability of the contested decision.

<sup>2</sup> The appellate court may suspend the enforceability of the contested decision. If necessary, it shall order protective measures or the provision of security.

**Art. 326** New applications, new facts and new evidence

<sup>1</sup> New applications, new allegations of fact and new evidence are not admissible.

<sup>2</sup> Special provisions of law are reserved.

**Art. 327** Procedure and decision

<sup>1</sup> The appellate court shall request the case files from the lower court.

<sup>2</sup> It may decide on the basis of the case files.

<sup>3</sup> In the event that it upholds the objection, the appellate court shall:

- a. set aside the decision or the procedural ruling and remit the case to the lower court; or
- b. make a new decision provided the appellate court is in the position to make a decision.

<sup>4</sup> If an objection of undue delay is upheld, the appellate court may set a deadline within which the lower court must deal with the case.

<sup>5</sup> The appellate court shall give notice of its decision to the parties together with a written statement of grounds.

**Art. 327a<sup>89</sup>** Enforcement declaration under the Lugano Convention

<sup>1</sup> If the objection is against a decision of the enforcement court under Articles 38 to 52 of the Lugano Convention of 30 October 2007<sup>90</sup> on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, the appellate court shall freely examine the grounds for refusal provided in the Convention.

<sup>2</sup> The objection has suspensive effect. Protective measures, in particular attachments under Article 271 paragraph 1 number 6 DEBA<sup>91</sup>, are reserved.

<sup>3</sup> The deadline for filing the objection against the enforcement declaration is governed by Article 43 paragraph 5 of the Convention.

**Chapter 3: Review****Art. 328** Grounds for review

<sup>1</sup> A party may request the court that has decided as final instance to review the final decision if:

<sup>89</sup> Inserted by Art. 3 No 1 of the Federal Decree of 11 Dec. 2009 (Approval and Implementation of the Lugano Convention), in force since 1 Jan. 2011 (AS **2010** 5601; BBl **2009** 1777).

<sup>90</sup> SR **0.275.12**

<sup>91</sup> SR **281.1**

- a. the party subsequently discovers significant facts or decisive evidence that could not have been submitted in the earlier proceedings, excluding facts and evidence that arose after the decision;
- b. criminal proceedings have established that the decision was influenced to the detriment of the party concerned by a felony or misdemeanour, even if no one has been convicted by the criminal court; if criminal proceedings are not possible, proof may be provided in some other manner;
- c. it is claimed that the acceptance, withdrawal or settlement of the claim is invalid.

<sup>2</sup> A review on the grounds of a violation of the European Convention on Human Rights of 4 November 1950<sup>92</sup> (ECHR) may be requested if:

- a. the European Court of Human Rights has determined in a final judgment that the ECHR or its protocols have been violated;
- b. compensation is not an appropriate remedy for the effects of the violation; and
- c. the review is necessary to remedy the violation.

**Art. 329**          Deadlines and form

<sup>1</sup> An application for a review must be filed in writing with a statement of the grounds within 90 days of the discovery of the grounds for review.

<sup>2</sup> The right to request a review expires 10 years after the decision comes into force, except in cases under Article 328 paragraph 1 letter b.

**Art. 330**          Response by the opposing party

The court shall serve the application for the review on the opposing party so that he or she may respond, unless the request is obviously inadmissible or obviously unfounded.

**Art. 331**          Suspensive effect

<sup>1</sup> A request for a review does not suspend the legal effect and enforceability of the decision.

<sup>2</sup> The court may suspend the enforceability of the contested decision. If necessary, it shall order protective measures or the provision of security.

**Art. 332**          Decision on the review application

The decision on the application for review may be challenged by way of objection.

<sup>92</sup> SR 0.101

**Art. 333**      New decision on the merits

<sup>1</sup> If the court upholds the request for a review, it shall quash its earlier decision and make a new one.

<sup>2</sup> In the new decision, the court shall also decide on the costs of the earlier proceedings.

<sup>3</sup> It shall give notice of its decision to the parties together with a written statement of grounds.

**Chapter 4: Explanation and Rectification****Art. 334**

<sup>1</sup> If the conclusions of the decision are unclear, contradictory or incomplete, or if they do not correspond with the statement of grounds, the court shall ex officio or at the request of a party provide an explanation or rectification of the decision. The request must indicate the relevant parts and the requested changes.

<sup>2</sup> Articles 330 and 331 apply by analogy. The court does not require the parties to comment when correcting typographical or arithmetical errors.

<sup>3</sup> The decision on the request for explanation or rectification may be contested by objection.

<sup>4</sup> Notice of the explained or rectified decision shall be given to the parties.

**Title 10: Enforcement****Chapter 1: Enforcement of Decisions****Art. 335**      Scope of application

<sup>1</sup> Decisions are enforced according to the provisions of this chapter.

<sup>2</sup> If a decision relates to the payment of money or provision of security, it is enforced according to the provisions of the DEBA<sup>93</sup>.

<sup>3</sup> The recognition, the declaration of enforceability and the enforcement of foreign decisions are governed by this chapter, unless an international treaty or the IPLA<sup>94</sup> provides otherwise.

**Art. 336**      Enforceability

<sup>1</sup> A decision is enforceable, if:

- a. it is legally binding and the court has not suspended its enforcement (Art. 325 para. 2 and 331 para. 2); or

<sup>93</sup> SR 281.1

<sup>94</sup> SR 291

b. it is not yet legally binding, but its early enforcement has been authorised.

<sup>2</sup> The court that has made the decision on enforceability shall certify the enforceability of the decision on request.

**Art. 337** Direct enforcement

<sup>1</sup> If the court making the decision has already ordered the necessary enforcement measures (Art. 236 para. 3), the decision may be directly enforced.

<sup>2</sup> The unsuccessful party may ask the enforcement court to suspend enforcement; Article 341 applies by analogy.

**Art. 338** Request for enforcement

<sup>1</sup> If the decision may not be directly enforced, a request for enforcement must be submitted to the enforcement court.

<sup>2</sup> The applicant must establish that the requirements for enforcement apply and produce the necessary physical records.

**Art. 339** Jurisdiction and procedure

<sup>1</sup> Mandatory jurisdiction to order the measures of enforcement or to suspend the enforcement lies with the court:

- a. at the domicile or registered office of the unsuccessful party;
- b. at the place where the measures are to be taken; or
- c. at the place where the decision to be enforced was made.

<sup>2</sup> The court decides in summary proceedings.

**Art. 340<sup>95</sup>** Protective measures

The enforcement court may order protective measures, if necessary without hearing the opposing party beforehand.

**Art. 341** Examination of enforceability and hearing the unsuccessful party

<sup>1</sup> The enforcement court shall examine enforceability *ex officio*.

<sup>2</sup> It shall allow the unsuccessful party a brief period within which to file its comments.

<sup>3</sup> On the merits, the unsuccessful party may only argue that matters preventing the enforcement of the decision have occurred since notice thereof was given, such as extinction, deferment, prescription or forfeiture of the right to due performance. Extinction and deferment must be proven by physical records.

<sup>95</sup> Amended in accordance with Art. 3 No 1 of the Federal Decree of 11 Dec. 2009 (Approval and Implementation of the Lugano Convention), in force since 1 Jan. 2011 (AS 2010 5601; BBl 2009 1777).



**Art. 342** Enforcement of conditional performance or performance subject to counter-performance

Decisions providing for conditional performance or performance that is subject to counter-performance may not be enforced until the enforcement court has determined that the condition is fulfilled or that the counter-performance has been duly offered, rendered, or guaranteed.

**Art. 343** Obligation to act, refrain from acting or to tolerate

<sup>1</sup> If the decision provides for an obligation to act, refrain from acting or to tolerate something, the enforcement court may:

- a. issue a threat of criminal penalty under Article 292 SCC<sup>96</sup>;
- b. impose a disciplinary fine not exceeding 5,000 francs;
- c. impose a disciplinary fine not exceeding 1,000 francs for each day of non-compliance;
- d. order a compulsory measure such as taking away a movable item or vacating immovable property; or
- e. order performance by a third party.

<sup>2</sup> The unsuccessful party and third parties must provide the required information and tolerate the required searches.

<sup>3</sup> The person entrusted with enforcement may request the assistance of the competent authorities.

**Art. 344** Declaration of intent

<sup>1</sup> If the decision relates to a declaration of intent, the enforceable decision takes the place of the declaration.

<sup>2</sup> If the declaration concerns a public register, such as the land register or the commercial register, the court making the decision shall issue the required instructions to the registrar.

**Art. 345** Damages and conversion into money

<sup>1</sup> The prevailing party may demand:

- a. damages if the unsuccessful party does not follow the orders of the court;
- b. conversion of the performance due into the payment of money.

<sup>2</sup> The enforcement court shall determine the relevant amount.

**Art. 346** Appellate remedy for third parties

Third parties may contest enforcement decisions by filing an objection if the decision affects their rights.

**Chapter 2: Enforcement of Official Records****Art. 347** Enforceability

Official records relating to any type of performance may be enforced in the same way as judicial decisions if:

- a. the obligee expressly declares in the record that he or she accepts direct enforcement;
- b. the legal ground for the performance due is mentioned in the record; and
- c. the performance due is:
  1. sufficiently specified in the record,
  2. accepted in the record by the obligee, and
  3. due.

**Art. 348** Exceptions

Official records are not directly enforceable if they concern performance:

- a. under the Gender Equality Act of 24 March 1995<sup>97</sup>;
- b. arising from the tenancy and lease of residential and business property or the lease of agricultural property;
- c. under the Participation Act of 17 December 1993<sup>98</sup>;
- d. arising from employment relations or under the Recruitment Act of 6 October 1989<sup>99</sup>;
- e. arising from consumer contracts (Art. 32).

**Art. 349** Records relating to performance in money

An enforceable record relating to performance in money is deemed to be a title setting aside an objection under Articles 80 and 81 DEBA<sup>100</sup>.

**Art. 350** Records relating to other forms of performance

<sup>1</sup> If the enforcement of a record relating to another form of performance is sought, at the request of the obligor the notary public shall serve the obligee with a certified

<sup>97</sup> SR 151.1

<sup>98</sup> SR 822.14

<sup>99</sup> SR 823.11

<sup>100</sup> SR 281.1

copy of the record, setting a deadline of 20 days for performance. The obligor receives a copy of the notification.

<sup>2</sup> If performance is not rendered within the deadline, the obligor may submit a request for enforcement to the enforcement court.

**Art. 351** Proceedings before the enforcement court

<sup>1</sup> The obligee may contest his or her obligation to render performance only if the objection raised can be immediately proven.

<sup>2</sup> If a declaration of intent is owed, the decision of the enforcement court takes the place of the declaration. The enforcement court shall issue the required instructions in accordance with Article 344 paragraph 2.

**Art. 352** Judicial review

The judicial review of the performance due is reserved in every case. In particular the obligee may at any time file a claim for a declaratory judgment that the obligation does not or no longer exists or that it has been suspended.

**Part 3: Arbitration**

**Title 1: General Provisions**

**Art. 353** Scope of application

<sup>1</sup> The provisions of this Part apply to the proceedings before arbitral tribunals based in Switzerland, unless the provisions of the Twelfth Chapter of the IPLA<sup>101</sup> apply.

<sup>2</sup> The parties may exclude the application of this Part by making an express declaration to this effect in the arbitration agreement or a subsequent agreement, and instead agree that the provisions of the Twelfth Chapter of the PILA apply. The declaration must be in the form specified in Article 358.

**Art. 354** Arbitrability

Any claim over which the parties may freely dispose may be the object of an arbitration agreement.

**Art. 355** Location of the arbitral tribunal

<sup>1</sup> The location of the arbitral tribunal shall be determined by the parties or by the body they have designated. If no location is determined, the arbitral tribunal itself determine its location.

<sup>101</sup> SR 291

<sup>2</sup> If neither the parties nor the designated body nor the arbitral tribunal determine the location, the ordinary court that would have jurisdiction to decide the matter in the absence of an arbitration agreement shall decide.

<sup>3</sup> If several ordinary courts have jurisdiction, the location of the arbitral tribunal shall be the location of the ordinary court first seised by virtue of Article 356.

<sup>4</sup> Unless the parties have agreed otherwise, the arbitral tribunal may hold hearings, take evidence and deliberate at any other location.

**Art. 356**          Competent ordinary courts

<sup>1</sup> The canton in which the arbitral tribunal is located shall designate a superior court that shall have jurisdiction:

- a. to decide on objections and applications for review;
- b. to receive the arbitral award on deposit and to certify its enforceability.

<sup>2</sup> The canton where the arbitral tribunal is located shall designate a different court or a differently composed court to have jurisdiction as the sole instance for:

- a. the appointment, challenge, removal and replacement of the arbitrators;
- b. the extension of the arbitral tribunal's term of office;
- c. supporting the arbitral tribunal in all its procedural acts.

**Title 2:          Arbitration Agreement**

**Art. 357**          Arbitration agreement

<sup>1</sup> The arbitration agreement may relate to existing or future disputes arising from a specific legal relationship.

<sup>2</sup> The validity of the agreement may not be disputed on the ground that the main contract is invalid.

**Art. 358**          Form

The arbitration agreement must be done in writing or in any other form allowing it to be evidenced by text.

**Art. 359**          Challenging the arbitral tribunal's jurisdiction

<sup>1</sup> If the validity of the arbitration agreement, its content, its scope or the proper constitution of the arbitral tribunal is challenged before the arbitral tribunal, the tribunal shall decide on its own jurisdiction by way of an interim decision or in the final award on the merits.

<sup>2</sup> An objection to the arbitral tribunal on the grounds of lack of jurisdiction must be raised prior to any defence on the merits.

**Title 3: Constitution of the Arbitral Tribunal****Art. 360** Number of arbitrators

<sup>1</sup> The parties may freely agree on the number of arbitrators. In the absence of an agreement, the arbitral tribunal shall consist of three members.

<sup>2</sup> If the parties have agreed on an even number of arbitrators, it is presumed that an additional arbitrator must be appointed as the chairperson.

**Art. 361** Appointment by the parties

<sup>1</sup> The members of the arbitral tribunal shall be appointed as agreed by the parties.

<sup>2</sup> In the absence of any agreement, each party shall appoint the same number of arbitrators; the arbitrators shall then unanimously elect another person as chairperson.

<sup>3</sup> If an arbitrator is designated by his or her function, the holder of that function who accepts the mandate is deemed to be appointed.

<sup>4</sup> In matters relating to the tenancy and lease of residential property, only the conciliation authority may be appointed as arbitral tribunal.

**Art. 362** Appointment by the ordinary court

<sup>1</sup> If the arbitration agreement provides no other body for the appointment, or if such body does not appoint the members within a reasonable time, the ordinary court competent under Article 356 paragraph 2 shall proceed with the appointment at the request of one of the parties if:

- a. the parties cannot agree on the appointment of the single arbitrator or the chairperson;
- b. a party fails to designate his or her arbitrator within 30 days from being requested to do so; or
- c. the appointed arbitrators cannot agree on the appointment of the chairperson within 30 days from their appointment.

<sup>2</sup> In case of a multi-party arbitration, the ordinary court competent under Article 356 paragraph 2 may appoint all the arbitrators.

<sup>3</sup> If an ordinary court is designated to appoint an arbitrator, it must proceed with the appointment unless a summary examination shows that no arbitration agreement exists between the parties.

**Art. 363** Duty to disclose

<sup>1</sup> A person asked to take the office of an arbitrator must disclose immediately any circumstances that might raise reasonable doubts about his or her independence or impartiality.

<sup>2</sup> This duty continues throughout the proceedings.

**Art. 364** Acceptance of office

<sup>1</sup> The arbitrators shall confirm acceptance of their office.

<sup>2</sup> The arbitral tribunal is constituted only when all the arbitrators have accepted their office.

**Art. 365** Secretary

<sup>1</sup> The arbitral tribunal may appoint a secretary.

<sup>2</sup> Articles 363 paragraph 1 and 367 to 369 apply by analogy.

**Art. 366** Term of office

<sup>1</sup> The parties may limit the term of office in the arbitration agreement or in a subsequent agreement.

<sup>2</sup> The term of office within which the arbitral tribunal must issue its award may be extended:

- a. by agreement of the parties;
- b. at the request of a party or of the arbitral tribunal: by the ordinary court with jurisdiction under Article 356 paragraph 2.

**Title 4: Challenge, Removal and Replacement of Arbitrators****Art. 367** Rejection of an arbitrator

<sup>1</sup> A member of the arbitral tribunal may be challenged:

- a. if he or she lacks the qualifications required by the parties;
- b. if there is a ground for challenge in accordance with the rules of arbitration adopted by the parties; or
- c. if there is reasonable doubt as to his or her independence or impartiality.

<sup>2</sup> If a party wishes to challenge an arbitrator who has been appointed by that party or in whose appointment that party has participated, that party may do so only on grounds that have come to his or her attention after the appointment. Notice of the reason for the challenge must be given to the arbitral tribunal and the opposing party immediately.

**Art. 368** Challenging the arbitral tribunal

<sup>1</sup> A party may challenge the arbitral tribunal if an opposing party has exerted a predominant influence on the appointment of its members. Notice of the challenge must be given to the arbitral tribunal and the opposing party immediately.

<sup>2</sup> The new arbitral tribunal is constituted according to the procedure specified in Articles 361 and 362.

<sup>3</sup> The parties may appoint the members of the challenged arbitral tribunal again as arbitrators.

**Art. 369** Challenge procedure

<sup>1</sup> The parties may freely agree on the challenge procedure.

<sup>2</sup> If no procedure has been agreed, the challenge must be submitted in writing with a statement of the grounds to the challenged arbitrator within 30 days of the challenging party becoming aware of the ground for challenge; notice of the request must be given to the other arbitrators within the same deadline.

<sup>3</sup> If the challenged arbitrator disputes the challenge, the challenging party may within 30 days request a decision by the body designated by the parties or, if no such body has been designated, by the ordinary court that has jurisdiction under Article 356 paragraph 2.

<sup>4</sup> Unless the parties have agreed otherwise, the arbitral tribunal may continue with the arbitration during the challenge procedure and make an award without excluding the challenged arbitrator.

<sup>5</sup> The decision on the challenge may be contested only once the first arbitral award has been made.

**Art. 370** Removal

<sup>1</sup> Any member of the arbitral tribunal may be removed by a written agreement of the parties.

<sup>2</sup> If a member of the arbitral tribunal is unable to fulfil his or her duties within due time or with due diligence, he or she may be removed at a party's request by the body designated by the parties or, if no such body has been designated, by the ordinary court that has jurisdiction under Article 356 paragraph 2.

<sup>3</sup> Article 369 paragraph 5 applies to the challenge of the removal.

**Art. 371** Replacement of an arbitrator

<sup>1</sup> If an arbitrator must be replaced, the same procedure as for appointment applies, unless the parties agree or have agreed otherwise.

<sup>2</sup> If replacement cannot be effected in this way, the new arbitrator shall be nominated by the ordinary court that has jurisdiction under Article 356 paragraph 2 unless the arbitration agreement excludes this possibility or becomes ineffective on the retirement of an arbitrator.

<sup>3</sup> In the absence of an agreement between the parties, the newly constituted arbitral tribunal shall decide on the extent to which procedural acts in which the replaced arbitrator has participated must be repeated.

<sup>4</sup> The deadline within which the arbitral tribunal must issue its award is not suspended during the replacement procedure.

## **Title 5: Arbitration Proceedings**

### **Art. 372 Pendency**

<sup>1</sup> Arbitration proceedings become pending:

- a. when a party seises the arbitral tribunal designated in the arbitration agreement; or
- b. if no arbitral tribunal is designated in the arbitration agreement: when a party initiates the procedure to constitute the arbitral tribunal or the preceding conciliation proceedings agreed by the parties.

<sup>2</sup> If identical actions between the same parties are submitted before an ordinary court and an arbitral tribunal, the last seised court shall suspend the proceedings until the first seised court has decided on its competence.

### **Art. 373 General rules of procedure**

<sup>1</sup> The parties may regulate the arbitration procedure:

- a. themselves;
- b. by referring to a set of arbitration rules;
- c. according to a procedural law of their choice.

<sup>2</sup> If the parties have not regulated the procedure, it is determined by the arbitral tribunal.

<sup>3</sup> The chairperson of the arbitral tribunal may decide on certain procedural questions if he or she is authorised to do so by the parties or by the other members of the tribunal.

<sup>4</sup> The arbitral tribunal must guarantee the equal treatment of the parties and their right to be heard in adversarial proceedings.

<sup>5</sup> Each party may act through a representative.

<sup>6</sup> A complaint must be made immediately about any violation of the procedural rules, otherwise it may not subsequently be claimed that the rules were violated.

### **Art. 374 Interim measures, security and damages**

<sup>1</sup> The ordinary court or, unless the parties have otherwise agreed, the arbitral tribunal may at the request of a party order interim measures, including measures to protect the evidence.

<sup>2</sup> If the person concerned does not comply with the measure ordered by the arbitral tribunal, the tribunal or a party may apply to the ordinary court for it to issue the necessary orders; if the application is made by a party, it requires the consent of the arbitral tribunal.

<sup>3</sup> The arbitral tribunal or the ordinary court may make the interim measures conditional on the payment of security if it is anticipated that the measures may cause harm to the other party.



<sup>4</sup> The applicant is liable for the harm caused by unjustified interim measures. If he or she proves, however, that the application for the measures was made in good faith, the arbitral tribunal or the ordinary court may reduce the damages or relieve the applicant entirely from liability. The aggrieved party may assert his or her claim in the pending arbitration.

<sup>5</sup> The security must be released once it is established that no claim for damages will be filed; where there is uncertainty, the court shall set a deadline for filing the action.

**Art. 375** Taking of evidence and participation of the ordinary court

<sup>1</sup> The arbitral tribunal takes the evidence itself.

<sup>2</sup> If the taking of evidence or any other procedural act requires the assistance of the official authorities, the arbitral tribunal may request the participation of the ordinary court that has jurisdiction under Article 356 paragraph 2. With the consent of the arbitral tribunal, the same may also be requested by a party.

<sup>3</sup> The members of the arbitral tribunal may participate in the procedural acts of the ordinary court and may ask questions.

**Art. 376** Joinder of parties, joinder of actions and participation of third parties

<sup>1</sup> Arbitration may be initiated by or against joint parties if:

- a. all the parties are connected among themselves by one or more corresponding arbitration agreements; and
- b. the asserted claims are identical or factually connected.

<sup>2</sup> Factually connected claims between the same parties may be joined in the same arbitration proceedings if they are the subject of corresponding arbitration agreements between these parties.

<sup>3</sup> The intervention of a third party and the joinder of a person notified as a party to an action require an arbitration agreement between the third party and the parties to the dispute and are subject to the consent of the arbitral tribunal.

**Art. 377** Set-off and counterclaim

<sup>1</sup> The arbitral tribunal has jurisdiction to decide the set-off defence, even if the claim to be set off does not fall within the scope of the arbitration agreement or is subject to another arbitration agreement or an agreement on jurisdiction.

<sup>2</sup> The counterclaim is admissible if it concerns a claim that is covered by a corresponding arbitration agreement between the parties.

**Art. 378** Advance of costs

<sup>1</sup> The arbitral tribunal may order the advance of the presumed costs of the proceedings and may make the proceedings conditional on the payment of the advance. Unless the parties have agreed otherwise, the arbitral tribunal determines the amount to be paid by each party.

<sup>2</sup> If one party does not pay the required advance, the other party may advance the entire costs or withdraw from the arbitration. In the latter case, the party withdrawing may initiate new arbitration proceedings for the same matter or proceed before the ordinary court.

**Art. 379** Security for party costs

If the plaintiff appears to be insolvent, the arbitral tribunal may at the defendant's request order that security be provided by a certain deadline for the probable party costs due by the defendant. Article 378 paragraph 2 applies by analogy.

**Art. 380** Legal aid

Legal aid is excluded.

**Title 6: Arbitral Award**

**Art. 381** Applicable law

<sup>1</sup> The arbitral tribunal decides:

- a. according to the rules of law chosen by the parties; or
- b. based on equity, if the parties have authorised it to do so.

<sup>2</sup> In the absence of such choice or authorisation, it shall decide according to the law that an ordinary court would apply.

**Art. 382** Deliberations and decision

<sup>1</sup> All members of the arbitral tribunal must participate in the deliberations and decisions.

<sup>2</sup> If an arbitrator refuses to participate in a deliberation or a decision, the others may deliberate or decide without him or her, unless the parties have agreed otherwise.

<sup>3</sup> The award is determined by a majority decision, unless the parties have agreed otherwise.

<sup>4</sup> If no majority is reached, the award is determined by the chairperson.

**Art. 383** Interim and partial awards

Unless the parties have agreed otherwise, the arbitral tribunal may limit the proceedings to certain questions or prayers for relief.

**Art. 384** Content of the award

<sup>1</sup> The award contains details of:

- a. the composition of the arbitral tribunal;

- b. the location where the arbitral tribunal sits;
- c. the parties and their representatives;
- d. the parties' prayers for relief or, if none, the question to be decided;
- e. unless the parties have explicitly dispensed with this requirement: a statement of the facts, the legal considerations and, if applicable, the considerations in equity;
- f. the conclusions on the award on the merits, as well as the amount and allocation of the costs and party costs;
- g. the date of the award.

<sup>2</sup> The award must be signed; the signature of the chairperson suffices.

**Art. 385** Agreement between the parties

If the parties settle their dispute in the course of the arbitral proceedings, the arbitral tribunal shall on request record the agreement in the form of an award.

**Art. 386** Notice and deposit

<sup>1</sup> Each party is served with notice of the award.

<sup>2</sup> Each party may at his or her own expense deposit a copy of the award with the ordinary court that has jurisdiction under Article 356 paragraph 1.

<sup>3</sup> At the request of a party, this court shall certify the award as enforceable.

**Art. 387** Effect of the award

Once notice of the award has been given to the parties, it has the effect of a legally-binding and enforceable judicial decision.

**Art. 388** Correction, explanation and amendment of the award

<sup>1</sup> Each party may apply to the arbitral tribunal to:

- a. correct typographical and arithmetical errors in the award;
- b. explain certain parts of the award;
- c. make an additional award on claims that have been asserted in the course of the arbitration but not included in the award.

<sup>2</sup> The application must be made to the arbitral tribunal within 30 days from the discovery of the error or the parts of the award that need to be explained or amended, but no later than one year from receiving notice of the award.

<sup>3</sup> The application does not suspend the deadlines for contesting the award. If a party is prejudiced by the outcome of this procedure, he or she shall be given a new deadline to contest the award on this point.

## **Title 7: Appellate Remedies**

### **Chapter 1: Objections**

#### **Art. 389** Objection to the Federal Supreme Court

<sup>1</sup> An arbitral award is subject to objection to the Federal Supreme Court.

<sup>2</sup> The procedure is governed by the Federal Supreme Court Act of 17 June 2005<sup>102</sup>, unless otherwise provided in this Chapter.

#### **Art. 390** Objection to the cantonal court

<sup>1</sup> By express declaration in the arbitration agreement or in a subsequent agreement, the parties may agree that the arbitral award may be contested by way of objection to the cantonal court that has jurisdiction under Article 356 paragraph 1.

<sup>2</sup> The procedure is governed by Articles 319 to 327, unless otherwise provided in this Chapter. The decision of the cantonal court is final.

#### **Art. 391** Subsidiarity

An objection is only admissible after the means of arbitral appeal provided for in the arbitration agreement are exhausted.

#### **Art. 392** Challengeable awards

An objection is admissible against:

- a. partial and final awards;
- b. interim awards on the grounds listed in Article 393 letters a and b.

#### **Art. 393** Grounds for objection

An arbitral award may be contested on the following grounds:

- a. the single arbitrator was appointed or the arbitral tribunal composed in an irregular manner;
- b. the arbitral tribunal wrongly declared itself to have or not to have jurisdiction;
- c. the arbitral tribunal decided issues that were not submitted to it or failed to decide on a prayer for relief;
- d. the principles of equal treatment of the parties or the right to be heard were violated;
- e. the award is arbitrary in its result because it is based on findings that are obviously contrary to the facts as stated in the case files or because it constitutes an obvious violation of law or equity;

<sup>102</sup> SR 173.110

- f. the costs and compensation fixed by the arbitral tribunal are obviously excessive.

**Art. 394** Remit for rectification or amendment

After hearing the parties, the appellate court may remit the award to the arbitral tribunal, setting a deadline to rectify or amend it.

**Art. 395** Decision

<sup>1</sup> If the award is not remitted to the arbitral tribunal or if it is not rectified or amended by the tribunal within the set deadline, the appellate court shall decide and, if the objection is approved, shall set aside the award.

<sup>2</sup> If the award is set aside, the arbitral tribunal shall make a new award consistent with the considerations taken into account in the decision to remit the case.

<sup>3</sup> Setting aside may be limited to certain parts of the award if the other parts do not depend on them.

<sup>4</sup> If the arbitral award is contested on the grounds that the compensation and costs are obviously excessive, the appellate court may itself decide on them.

## Chapter 2: Review

**Art. 396** Grounds for review

<sup>1</sup> A party may request the ordinary court that has jurisdiction under Article 356 paragraph 1 to review an arbitral award if:

- a. the party subsequently discovers significant facts or decisive evidence that could not have been submitted in the earlier proceedings, excluding facts and evidence that arose after the arbitral award was made;
- b. criminal proceedings have established that the arbitral award was influenced to the detriment of the party concerned by a felony or misdemeanour, even if no one is convicted by a criminal court; if criminal proceedings are not possible, proof may be provided in some other manner;
- c. it is claimed that the acceptance, withdrawal or settlement of the claim is invalid.

<sup>2</sup> The review on the grounds of a violation of the ECHR<sup>103</sup> may be requested if:

- a. the European Court of Human Rights has determined in a final judgment that the ECHR or its protocols have been violated;
- b. compensation is not an appropriate remedy for the effects of the violation; and
- c. the review is necessary to remedy the violation.

<sup>103</sup> SR 0.101

**Art. 397** Deadlines

<sup>1</sup> The request for review must be filed within 90 days of discovery of the grounds for review.

<sup>2</sup> The right to request for a review expires 10 years after the award comes into force, except in cases under Article 396 paragraph 1 letter b.

**Art. 398** Procedure

The procedure is governed by Articles 330 to 331.

**Art. 399** Remit to the arbitral tribunal

<sup>1</sup> If the court approves the request for review, it shall set aside the arbitral award and remit the case to the arbitral tribunal for a new decision.

<sup>2</sup> If the arbitral tribunal is no longer complete, Article 371 applies.

**Part 4: Final Provisions****Title 1: Implementation****Art. 400** Principles

<sup>1</sup> The Federal Council shall issue the implementing provisions.

<sup>2</sup> It provides forms for court records and party submissions. The forms for the parties must be designed in a way that they can be completed by persons who are not legally trained.

<sup>3</sup> The Federal Council may delegate responsibility for issuing administrative and technical regulations to the Federal Office of Justice.

**Art. 401** Pilot projects

<sup>1</sup> The cantons may carry out pilot projects with the consent of the Federal Council.

<sup>2</sup> The Federal Council may delegate competence for the approval of such projects to the Federal Office of Justice.

**Title 2: Amendment of Legislation****Art. 402** Repeal and amendment of current legislation

The repeal and amendment of existing legislation is dealt with in Annex 1.

**Art. 403** Coordination provisions

The coordination of this Code with provisions of other enactments is dealt with in Annex 2.

**Title 3: Transitional Provisions****Chapter 1: Transitional Provisions of 19 December 2008<sup>104</sup>****Art. 404** Continued application of the previous law

<sup>1</sup> Proceedings that are pending when this Code comes into force are governed by the previous procedural law until the close of the proceedings before the respective instance.

<sup>2</sup> Territorial jurisdiction is governed by the new law. However, jurisdiction conferred under the previous law continues.

**Art. 405** Appellate remedies

<sup>1</sup> Appellate remedies are governed by the law in force when notice of the decision is given to the parties.

<sup>2</sup> The review of a decision notified under the previous law is governed by the new law.

**Art. 406** Agreement on jurisdiction

The validity of an agreement on jurisdiction is governed by the law in force at the time of conclusion of the agreement.

**Art. 407** Arbitration

<sup>1</sup> The validity of arbitration agreements concluded before the commencement of this Code is governed by the law that favours the agreement.

<sup>2</sup> Arbitration proceedings that are pending on the commencement of this Code are governed by the previous law. The parties may, however, agree on the application of the new law.

<sup>3</sup> Appellate remedies are governed by the law in force when notice of the arbitral award is given to the parties.

<sup>4</sup> Judicial proceedings under Article 356 that are pending on the commencement of this Code are governed by the previous law.

<sup>104</sup> Inserted by No I 1 of the Federal Act of 28 Sept. 2012 (Transcription Regulations), in force since 1 May 2013 (AS 2013 851; BBl 2012 5707 5719).

**Chapter 2:**<sup>105</sup>  
**Transitional Provision to the Amendment of 28 September 2012**

**Art. 407a**

In proceedings that are pending when the Amendment of 28 September 2012 to this Code comes into force, the new law applies to procedural acts from the date on which the Amendment comes into force

**Title 4:       Referendum and Commencement**

**Art. 408**

<sup>1</sup> This Code is subject to an optional referendum.

<sup>2</sup> The Federal Council shall determine the commencement date.

Commencement Date: 1 January 2011<sup>106</sup>

<sup>105</sup> Inserted by No 11 of the Federal Act of 28 Sept. 2012 (Transcription Regulations), in force since 1 May 2013 (AS **2013** 851; BBl **2012** 5707 5719).

<sup>106</sup> Federal Council Decree of 31 March 2010



## **Repeal and Amendment of Current Legislation**

### **I. Repeal of current legislation**

The Civil Jurisdiction Act of 24 March 2000<sup>107</sup> is repealed.

### **II. Amendment of current legislation**

The federal acts below are amended as follows:

...<sup>108</sup>

<sup>107</sup> [AS 2000 2355, 2004 2617 Annex No 3, 2005 5685 Annex No 14, 2006 5379 Annex No II 2]

<sup>108</sup> The amendments may be consulted under AS 2010 1739.

*Annex 2*  
(Art. 403)

## Coordination Provisions

### 1. Coordination of the Civil Procedure Code with the new Nuclear Energy Public Liability Act

*Irrespective of whether the Nuclear Energy Public Liability Act of 13 June 2008<sup>109</sup> (new NEPLA) or the Civil Procedure Code of 19 December 2008 (CPC) comes into force first, on commencement of the enactment that comes into force later or if both enactments come into force on the same date, the CPC shall be amended as follows:*

*Art. 5 para. 1 let. e*

<sup>1</sup> Cantonal law shall designate the court that has jurisdiction as sole cantonal instance for:

- e. disputes under the Nuclear Energy Public Liability Act of 13 June 2008<sup>110</sup>;

*Art. 38a* Nuclear damage

<sup>1</sup> In the case of actions arising from nuclear incidents, the court in the canton where the incident took place has mandatory jurisdiction.

<sup>2</sup> If there is any uncertainty as to which canton this is, the court in the canton where the nuclear installation of the liable proprietor is located has mandatory jurisdiction.

<sup>3</sup> If two or more courts have jurisdiction in accordance with these rules, the court in the canton that is most closely linked to the incident and which is most seriously affected by it has mandatory jurisdiction.

### 2. Coordination of Number 19 of Annex 1 with the new NEPLA

*Irrespective of whether the new NEPLA<sup>111</sup> or the CPC comes into force first, on commencement of the enactment that comes into force later or if both enactments come into force on the same date, Number 19 of Annex 1 of the CPC ceases to apply and the new NEPLA shall be amended in accordance with Number 20 of Annex 1 of the CPC.*

<sup>109</sup> SR 732.44; BBI 2008 5341

<sup>110</sup> SR 732.44; BBI 2008 5341

<sup>111</sup> SR 732.44; BBI 2008 5341

### **3. Coordination with the Amendment of the Civil Code (CC) of 19 December 2008 (Protection of Adults, Law of Persons and Law on Children)**

*Irrespective of whether the amendment of the CC of 19 December 2008<sup>112</sup> (protection of adults, law of persons and law on children) of the CPC comes into force first, on commencement of the enactment that comes into force later or if both enactments come into force on the same date, the CPC shall be amended as follows:*

#### *Art. 69 para. 2*

<sup>2</sup> The court shall notify the adult and child protection authority if it regards protective measures as being required.

#### *Art. 160 para. 2 first sentence*

<sup>2</sup> The court has free discretion to decide on the duty of minors to cooperate. ...

#### *Art. 165 para. 1 let. e*

<sup>1</sup> A decision against any cooperation may be taken by:

- e. the person appointed as a party's guardian or welfare advocate.

#### *Art. 249 let. a and b*

Summary procedure applies in particular in the following cases:

- a. Law of persons:
  - 1. Setting time limits for the approval of legal transactions by minors or persons in respect of whom a welfare advocate with full powers has been appointed (Art. 19a CC),
  - 2. Right of reply (Art. 28/ CC),
  - 3. Declaration of presumed death (Art. 35–38 CC),
  - 4. Rectification of an entry in the civil register (Art. 42 CC);
- b. *Repealed*

#### *Art. 299 para. 2 let. b*

<sup>2</sup> It shall review the ordering of a representative in particular if:

- b. the child protection authority or a parent requests a representative;

<sup>112</sup> SR 210; BBI 2009 141

## Table of Contents

### Part 1: General Provisions

#### Title 1: Subject Matter and Scope of Application

Subject matter .....	Art. 1
International matters .....	Art. 2
Organisation of the courts and the conciliation authorities .....	Art. 3

#### Title 2: Jurisdiction of the Courts and Recusal

##### Chapter 1: Material Jurisdiction and Functional Jurisdiction

Principles .....	Art. 4
Court of sole cantonal instance.....	Art. 5
Commercial Court .....	Art. 6
Disputes concerning insurance supplementary to social health insurance .....	Art. 7
Direct action before the higher court .....	Art. 8

##### Chapter 2: Territorial Jurisdiction

###### Section 1: General Provisions

Mandatory jurisdiction.....	Art. 9
Domicile and registered office.....	Art. 10
Residence .....	Art. 11
Establishment.....	Art. 12
Interim measures.....	Art. 13
Counterclaim.....	Art. 14
Joinder of parties and joinder of actions.....	Art. 15
Third party action .....	Art. 16
Agreement on jurisdiction .....	Art. 17
Acceptance by appearance.....	Art. 18
Non-contentious matters .....	Art. 19

###### Section 2: Law of Persons

Protection of personal privacy and data protection .....	Art. 20
Declaration of death and declaration of presumed death.....	Art. 21
Modification of the civil register .....	Art. 22

###### Section 3: Family Law

Applications and actions based on marital law.....	Art. 23
Applications and actions in registered partnership matters .....	Art. 24

Actions relating to parent-child relationships.....	Art. 25
Actions for maintenance and assistance .....	Art. 26
Claims of the unmarried mother .....	Art. 27
<b>Section 4: Law of Succession</b>	
.....	Art. 28
<b>Section 5: Property Law</b>	
Immovable property .....	Art. 29
Chattels .....	Art. 30
<b>Section 6: Actions in Contract</b>	
Principle.....	Art. 31
Consumer contracts .....	Art. 32
Tenancy and lease of immovable property.....	Art. 33
Employment Law .....	Art. 34
Waiver of statutory jurisdiction.....	Art. 35
<b>Section 7: Actions in Tort</b>	
Principle.....	Art. 36
Damages for unjustified interim measures .....	Art. 37
Motor vehicle and bicycle accidents .....	Art. 38
Incidental civil claim .....	Art. 39
<b>Section 8: Commercial Law</b>	
Company law.....	Art. 40
Actions for the suspension of voting rights .....	Art. 41
Mergers, demergers, transformations, transfers of assets and liabilities .....	Art. 42
Cancellation of securities and insurance policies, injunc- tion against payment.....	Art. 43
Bonds.....	Art. 44
Collective investment schemes.....	Art. 45
<b>Section 9: Debt Enforcement and Bankruptcy Law</b>	
.....	Art. 46
<b>Chapter 3: Recusal</b>	
Grounds for recusal .....	Art. 47
Duty to provide information.....	Art. 48
Application for recusal .....	Art. 49
Decision.....	Art. 50
Consequences of violating the regulations on recusal.....	Art. 51

**Title 3: Procedural Principles and Procedural Requirements**

**Chapter 1: Procedural Principles**

Acting in good faith ..... Art. 52

Right to be heard..... Art. 53

Publicity ..... Art. 54

Principles of production of evidence and of ex-officio investigation..... Art. 55

Court's duty to enquire..... Art. 56

Ex-officio application of the law ..... Art. 57

Principles of non ultra petita and ex-officio assessment ..... Art. 58

**Chapter 2: Procedural Requirements**

Principle..... Art. 59

Verification of compliance with the procedural requirements..... Art. 60

Arbitration agreement..... Art. 61

**Title 4: Pendency and Effects of Withdrawal of the Action**

Start of pendency ..... Art. 62

Pendency where the court has no jurisdiction or the procedure is incorrect ..... Art. 63

Effects of pendency ..... Art. 64

Effects of withdrawal..... Art. 65

**Title 5: Parties and Participation of Third Parties**

**Chapter 1: Capacity to be a Party and Capacity to take Legal Action**

Capacity to be a party ..... Art. 66

Capacity to take legal action..... Art. 67

**Chapter 2: Representation of the Parties**

Representation by agreement..... Art. 68

Inability to appear ..... Art. 69

**Chapter 3: Joinder of Parties**

Mandatory joinder ..... Art. 70

Voluntary joinder..... Art. 71

Joint representation..... Art. 72

## **Chapter 4: Third Party Intervention**

### **Section 1: Principal Intervention**

.....Art. 73

### **Section 2: Accessory Intervention**

Principle.....Art. 74

Application.....Art. 75

Rights of the Intervenor.....Art. 76

Effect of intervention.....Art. 77

## **Chapter 5: Third Party Notice**

### **Section 1: Third Party Notice**

Principles.....Art. 78

Standing of the third party.....Art. 79

Effects of notice.....Art. 80

### **Section 2: Third Party Action**

Principles.....Art. 81

Procedure.....Art. 82

## **Chapter 6: Substitution of a Party**

.....Art. 83

## **Title 6: Actions**

Action for performance.....Art. 84

Action for an unquantified debt.....Art. 85

Partial action.....Art. 86

Action to modify a legal relationship.....Art. 87

Action for a declaratory judgment.....Art. 88

Group action.....Art. 89

Combination of actions.....Art. 90

## **Title 7: Value in Dispute**

Principle.....Art. 91

Recurring usage or services.....Art. 92

Joinder of parties and joinder of actions.....Art. 93

Counterclaim.....Art. 94

## **Title 8: Costs and Legal Aid**

### **Chapter 1: Procedural Costs**

Definitions.....Art. 95

Tariffs.....Art. 96

Advice on procedural costs.....	Art. 97
Advance payment of costs.....	Art. 98
Security for party costs.....	Art. 99
Nature and amount of security.....	Art. 100
Provision of advance and security.....	Art. 101
Advance for taking of evidence.....	Art. 102
Appellate remedy.....	Art. 103

### **Chapter 2: Allocation and Settlement of Procedural Costs**

Decision on costs.....	Art. 104
Determination and allocation of costs.....	Art. 105
General principles of allocation.....	Art. 106
Discretionary allocation.....	Art. 107
Unnecessary costs.....	Art. 108
Allocation in the event of a settlement.....	Art. 109
Appellate remedy.....	Art. 110
Recovery of costs.....	Art. 111
Deferment, waiver, prescription and interest.....	Art. 112

### **Chapter 3: Special Provisions on Costs**

Conciliation proceedings.....	Art. 113
Litigation proceedings.....	Art. 114
Obligation to bear costs.....	Art. 115
Exemption under cantonal law.....	Art. 116

### **Chapter 4: Legal Aid**

Entitlement.....	Art. 117
Extent.....	Art. 118
Application and procedure.....	Art. 119
Revocation of legal aid.....	Art. 120
Appellate remedy.....	Art. 121
Recovery of costs.....	Art. 122
Reimbursement.....	Art. 123

## **Title 9: Director of Proceedings, Procedural Acts and Deadlines**

### **Chapter 1: Director of proceedings**

Principles.....	Art. 124
Simplification of proceedings.....	Art. 125
Suspension of proceedings.....	Art. 126
Transfer of connected cases.....	Art. 127



Procedural discipline and vexatious conduct .....	Art. 128
<b>Chapter 2: Forms of Procedural Acts</b>	
<b>Section 1: Language of the Proceedings</b>	
.....	Art. 129
<b>Section 2: Party Submissions</b>	
Form .....	Art. 130
Number of copies .....	Art. 131
Defective, querulous and abusive submissions .....	Art. 132
<b>Section 3: Summons</b>	
Content .....	Art. 133
Timing .....	Art. 134
Postponement of appearance .....	Art. 135
<b>Section 4: Service of Process</b>	
Documents to be served .....	Art. 136
Service to a representative .....	Art. 137
Form .....	Art. 138
Electronic service .....	Art. 139
Domicile for service .....	Art. 140
Public notice .....	Art. 141
<b>Chapter 3: Limitation Periods, Default and Restitution</b>	
<b>Section 1: Limitation Periods</b>	
Computation .....	Art. 142
Compliance .....	Art. 143
Extension .....	Art. 144
Suspension of limitation periods .....	Art. 145
Effects of suspension .....	Art. 146
<b>Section 2: Default and Restitution</b>	
Default and consequences of default .....	Art. 147
Restitution .....	Art. 148
Restitution procedure .....	Art. 149
<b>Title 10: Evidence</b>	
<b>Chapter 1: General Provisions</b>	
Subject of evidence .....	Art. 150
Known facts .....	Art. 151
Right to evidence .....	Art. 152

Taking of evidence ex officio .....	Art. 153
Ruling on evidence .....	Art. 154
Taking of evidence .....	Art. 155
Safeguarding legitimate interests.....	Art. 156
Free assessment of evidence .....	Art. 157
Precautionary taking of evidence.....	Art. 158
Management bodies of a legal entity .....	Art. 159

## **Chapter 2: Duty to Cooperate and Right to Refuse**

### **Section 1: General Provisions**

Duty to cooperate.....	Art. 160
Advice.....	Art. 161
Justified refusal to cooperate .....	Art. 162

### **Section 2: The Parties' Right to Refuse**

Right to refuse.....	Art. 163
Unjustified refusal .....	Art. 164

### **Section 3: Third Parties' Right to Refuse**

Absolute right to refuse .....	Art. 165
Limited right to refuse .....	Art. 166
Unjustified refusal .....	Art. 167

## **Chapter 3: Evidence**

### **Section 1: Admissible Evidence**

.....	Art. 168
-------	----------

### **Section 2: Testimony**

Subject matter .....	Art. 169
Summons .....	Art. 170
Form of statement .....	Art. 171
Content of statement .....	Art. 172
Additional questions .....	Art. 173
Confrontation .....	Art. 174
Testimony of an expert witness .....	Art. 175
Transcript .....	Art. 176

### **Section 3: Physical Records**

Definition .....	Art. 177
Authenticity .....	Art. 178
Evidentiary force of public registers and official records .....	Art. 179
Production of physical records .....	Art. 180

**Section 4: Inspection**

Procedure .....	Art. 181
Record .....	Art. 182

**Section 5: Expert Opinion**

Principles .....	Art. 183
Rights and obligations of the expert .....	Art. 184
Mandate .....	Art. 185
Enquiries by the expert .....	Art. 186
Submission of the opinion .....	Art. 187
Default and inadequate performance .....	Art. 188
Arbitrator's opinion .....	Art. 189

**Section 6: Written Information**

.....	Art. 190
-------	----------

**Section 7: Examination of the Parties and Giving Evidence**

Examination of the parties .....	Art. 191
Giving evidence .....	Art. 192
Record .....	Art. 193

**Title 11: Mutual Assistance between Swiss Courts**

Principle .....	Art. 194
Procedural acts in another canton .....	Art. 195
Mutual assistance .....	Art. 196

**Part 2: Special Provisions****Title 1: Attempt at Conciliation****Chapter 1: Scope of Application and Conciliation****Authority**

Principle .....	Art. 197
Exceptions .....	Art. 198
Waiver of conciliation .....	Art. 199
Joint conciliation authorities .....	Art. 200
Tasks of the conciliation authority .....	Art. 201

**Chapter 2: Conciliation Proceedings**

Initiation .....	Art. 202
Hearing .....	Art. 203
Personal appearance .....	Art. 204

Confidentiality of proceedings .....	Art. 205
Default .....	Art. 206
Costs of conciliation proceedings.....	Art. 207

### **Chapter 3: Agreement and Authorisation to Proceed**

Agreement between the parties.....	Art. 208
Authorisation to proceed.....	Art. 209

### **Chapter 4: Proposed Judgment and Decision**

Proposed judgment .....	Art. 210
Effects .....	Art. 211
Decision .....	Art. 212

## **Title 2: Mediation**

Mediation instead of conciliation .....	Art. 213
Mediation during court proceedings.....	Art. 214
Organisation and conduct of mediation .....	Art. 215
Relationship with court proceedings .....	Art. 216
Approval of an agreement .....	Art. 217
Costs of mediation .....	Art. 218

## **Title 3: Ordinary Proceedings**

### **Chapter 1: Scope of Application**

.....	Art. 219
-------	----------

### **Chapter 2: Exchange of Written Submissions and Preparation for the Main Hearing**

Initiation.....	Art. 220
Statement of claim .....	Art. 221
Statement of defence.....	Art. 222
Failure to file a statement of defence.....	Art. 223
Counterclaim.....	Art. 224
Second exchange of written submissions .....	Art. 225
Instruction hearing.....	Art. 226
Amendment of the statement of claim.....	Art. 227

### **Chapter 3: Main Hearing**

Opening party submissions.....	Art. 228
New facts and evidence .....	Art. 229
Amendment of the statement of claim.....	Art. 230
Taking of evidence .....	Art. 231
Closing submissions .....	Art. 232

Dispensing with the main hearing .....	Art. 233
Failure to attend the main hearing .....	Art. 234

#### **Chapter 4: Records**

.....	Art. 235
-------	----------

#### **Chapter 5: Decision**

Final decision .....	Art. 236
Interim decision .....	Art. 237
Content .....	Art. 238
Notice to the parties and statement of grounds .....	Art. 239
Notice and publication of the decision .....	Art. 240

#### **Chapter 6: Close of Proceedings without Decision**

Settlement, acceptance, withdrawal .....	Art. 241
Proceedings made groundless for other reasons .....	Art. 242

### **Title 4: Simplified Proceedings**

Scope of application .....	Art. 243
Simplified statement of claim .....	Art. 244
Summons to a hearing and statement of defence .....	Art. 245
Procedural rulings .....	Art. 246
Establishment of facts .....	Art. 247

### **Title 5: Summary Proceedings**

#### **Chapter 1: Scope of Application**

Principle .....	Art. 248
Civil Code .....	Art. 249
Code of Obligations .....	Art. 250
Debt Enforcement and Bankruptcy Act of 11 April 1889 .....	Art. 251

#### **Chapter 2: Procedure and Decision**

Application .....	Art. 252
Answer .....	Art. 253
Evidence .....	Art. 254
Principle of ex-officio investigation .....	Art. 255
Decision .....	Art. 256

#### **Chapter 3: Clear Cases**

.....	Art. 257
-------	----------

#### **Chapter 4: Court Injunction**

Principle .....	Art. 258
-----------------	----------

Notice.....	Art. 259
Opposition.....	Art. 260

## **Chapter 5: Interim Measures and Protective Letter**

### **Section 1: Interim Measures**

Principle.....	Art. 261
Subject matter.....	Art. 262
Measures ordered before the action becomes pending.....	Art. 263
Security and damages.....	Art. 264
Ex-parte interim measures.....	Art. 265
Measures against the media.....	Art. 266
Enforcement.....	Art. 267
Modification and revocation.....	Art. 268
Reservation.....	Art. 269

### **Section 2: Protective Letter**

.....	Art. 270
-------	----------

## **Title 6: Special Proceedings in Marital Law**

### **Chapter 1: Summary Proceedings**

Scope of Application.....	Art. 271
Principle of ex-officio investigation.....	Art. 272
Procedure.....	Art. 273

### **Chapter 2: Divorce Proceedings**

#### **Section 1: General Provisions**

Initiation.....	Art. 274
Suspension of the common household.....	Art. 275
Interim measures.....	Art. 276
Establishment of facts.....	Art. 277
Personal appearance.....	Art. 278
Approval of the agreement.....	Art. 279
Agreement on occupational pension benefits.....	Art. 280
Failure to agree on the division of withdrawal benefits.....	Art. 281
Maintenance payments.....	Art. 282
Unity of decision.....	Art. 283
Adjusting the binding effects of divorce.....	Art. 284

#### **Section 2: Divorce at Joint Request**

Submission in the case of comprehensive agreement.....	Art. 285
Submission in the case of partial agreement.....	Art. 286

Hearing of the parties .....	Art. 287
Continuation of the proceedings and decision.....	Art. 288
Appellate remedies .....	Art. 289

### **Section 3: Action for Divorce**

Filing the action .....	Art. 290
Conciliation hearing .....	Art. 291
Change to divorce at joint request.....	Art. 292
Amendment of the action .....	Art. 293

### **Section 4: Actions for Annulment and Separation**

.....	Art. 294
-------	----------

## **Title 7: Proceedings relating to Children in Family Law Matters**

### **Chapter 1: General Provisions**

Principle.....	Art. 295
Principles of ex-officio investigation and assessment.....	Art. 296

### **Chapter 2: Proceedings in Marital law**

Hearing of the parents and mediation.....	Art. 297
Hearing the child .....	Art. 298
Appointing a representative for the child .....	Art. 299
Competence of the representative.....	Art. 300
Notice of the decision .....	Art. 301

### **Chapter 3: Summary Procedure**

Scope of application .....	Art. 302
----------------------------	----------

### **Chapter 4: Maintenance and Paternity Actions**

Interim measures .....	Art. 303
Jurisdiction .....	Art. 304

## **Title 8: Proceedings relating to Same-Sex Partnerships**

### **Chapter 1: Summary Procedure**

Scope of application .....	Art. 305
Procedure.....	Art. 306

### **Chapter 2: Dissolution and Annulment of Same-Sex Partnerships**

.....	Art. 307
-------	----------

## **Title 9: Appellate Remedies**

### **Chapter 1: Appeal**

#### **Section 1: Decisions that may be contested and Grounds for Appeal**

Decisions that may be contested .....	Art. 308
Exceptions.....	Art. 309
Grounds for appeal .....	Art. 310

#### **Section 2: Appeals, Answers to the Appeal and Cross Appeals**

Filing of appeal.....	Art. 311
Answer to the appeal .....	Art. 312
Cross appeal.....	Art. 313
Summary proceedings .....	Art. 314

#### **Section 3: Effects and Procedure of an Appeal**

Suspensive effect .....	Art. 315
Procedure before the appellate court .....	Art. 316
New facts and new evidence; Amendment of claim .....	Art. 317
Decision .....	Art. 318

### **Chapter 2: Objections**

Object of objection .....	Art. 319
Grounds for an objection .....	Art. 320
Filing an objection .....	Art. 321
Answer to the objection .....	Art. 322
Cross objections.....	Art. 323
Comments of the lower court .....	Art. 324
Suspensive effect .....	Art. 325
New applications, new facts and new evidence.....	Art. 326
Procedure and decision .....	Art. 327
Enforcement declaration under the Lugano Convention .....	Art. 327a

### **Chapter 3: Review**

Grounds for review .....	Art. 328
Deadlines and form.....	Art. 329
Response by the opposing party .....	Art. 330
Suspensive effect .....	Art. 331
Decision on the review application.....	Art. 332
New decision on the merits.....	Art. 333



**Chapter 4: Explanation and Rectification**

.....Art. 334

**Title 10: Enforcement****Chapter 1: Enforcement of Decisions**

Scope of application .....	Art. 335
Enforceability .....	Art. 336
Direct enforcement .....	Art. 337
Request for enforcement.....	Art. 338
Jurisdiction and procedure.....	Art. 339
Protective measures.....	Art. 340
Examination of enforceability and hearing the unsuccessful party .....	Art. 341
Enforcement of conditional performance or performance subject to counter-performance .....	Art. 342
Obligation to act, refrain from acting or to tolerate.....	Art. 343
Declaration of intent .....	Art. 344
Damages and conversion into money .....	Art. 345
Appellate remedy for third parties.....	Art. 346

**Chapter 2: Enforcement of Official Records**

Enforceability .....	Art. 347
Exceptions .....	Art. 348
Records relating to performance in money.....	Art. 349
Records relating to other forms of performance.....	Art. 350
Proceedings before the enforcement court .....	Art. 351
Judicial review.....	Art. 352

**Part 3: Arbitration****Title 1: General Provisions**

Scope of application .....	Art. 353
Arbitrability .....	Art. 354
Location of the arbitral tribunal.....	Art. 355
Competent ordinary courts .....	Art. 356

**Title 2: Arbitration Agreement**

Arbitration agreement.....	Art. 357
Form .....	Art. 358
Challenging the arbitral tribunal's jurisdiction .....	Art. 359

### **Title 3: Constitution of the Arbitral Tribunal**

Number of arbitrators .....	Art. 360
Appointment by the parties .....	Art. 361
Appointment by the ordinary court .....	Art. 362
Duty to disclose .....	Art. 363
Acceptance of office .....	Art. 364
Secretary .....	Art. 365
Term of office .....	Art. 366

### **Title 4: Challenge, Removal and Replacement of Arbitrators**

Rejection of an arbitrator .....	Art. 367
Challenging the arbitral tribunal .....	Art. 368
Challenge procedure .....	Art. 369
Removal .....	Art. 370
Replacement of an arbitrator .....	Art. 371

### **Title 5: Arbitration Proceedings**

Pendency .....	Art. 372
General rules of procedure .....	Art. 373
Interim measures, security and damages .....	Art. 374
Taking of evidence and participation of the ordinary court .....	Art. 375
Joinder of parties, joinder of actions and participation of third parties .....	Art. 376
Set-off and counterclaim .....	Art. 377
Advance of costs .....	Art. 378
Security for party costs .....	Art. 379
Legal aid .....	Art. 380

### **Title 6: Arbitral Award**

Applicable law .....	Art. 381
Deliberations and decision .....	Art. 382
Interim and partial awards .....	Art. 383
Content of the award .....	Art. 384
Agreement between the parties .....	Art. 385
Notice and deposit .....	Art. 386
Effect of the award .....	Art. 387
Correction, explanation and amendment of the award .....	Art. 388

## **Title 7: Appellate Remedies**

### **Chapter 1: Objections**

Objection to the Federal Supreme Court .....	Art. 389
Objection to the cantonal court .....	Art. 390
Subsidiarity .....	Art. 391
Challengeable awards .....	Art. 392
Grounds for objection .....	Art. 393
Remit for rectification or amendment .....	Art. 394
Decision .....	Art. 395

### **Chapter 2: Review**

Grounds for review .....	Art. 396
Deadlines .....	Art. 397
Procedure .....	Art. 398
Remit to the arbitral tribunal .....	Art. 399

## **Part 4: Final Provisions**

### **Title 1: Implementation**

Principles .....	Art. 400
Pilot projects .....	Art. 401

### **Title 2: Amendment of Legislation**

Repeal and amendment of current legislation .....	Art. 402
Coordination provisions .....	Art. 403

### **Title 3: Transitional Provisions**

Continued application of the previous law .....	Art. 404
Appellate remedies .....	Art. 405
Agreement on jurisdiction .....	Art. 406
Arbitration .....	Art. 407

### **Title 4: Referendum and Commencement**

.....	Art. 408
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