

# Switzerland's Federal Code on Private International Law (CPIL)<sup>1</sup>

of December 18, 1987 (Status as at 1 April 2017)

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*The Federal Assembly of the Swiss Confederation,*

based on the authority of the Confederation in matters of foreign relations and on Article 64 of the Federal Constitution;

and in consideration of the message of the Federal Council, dated November 10, 1982,

*enacts:*

## **Chapter 1: Provisions in Common**

### Section 1: Scope

#### **Art. 1**

<sup>1</sup>This Code governs, in an international context:

- a. The jurisdiction of the Swiss judicial and administrative authorities;
- b. The applicable law;
- c. The conditions for the recognition and enforcement of foreign decisions;
- d. Bankruptcy and composition agreements;
- e. Arbitration.

<sup>2</sup>International treaties take precedence.

### Section 2: Jurisdiction

#### **Art. 2**

I. In general

Unless this Code provides otherwise, the Swiss judicial or administrative authorities at the domicile of the defendant shall have jurisdiction.

**Art. 3**

## II. Emergency jurisdiction

If this Code does not provide for jurisdiction in Switzerland and if proceedings abroad are impossible or cannot reasonably be required to be brought, the Swiss judicial or administrative authorities at the place with which the facts of the case are sufficiently connected shall have jurisdiction.

**Art. 4**

## III. Validation of attachment

If this Code does not provide for any other jurisdiction in Switzerland, an action to validate an attachment may be brought at the place in Switzerland where the attachment was obtained.

**Art. 5**

## IV. Choice of court

<sup>1</sup> The parties may agree on a court for an existing or a future dispute concerning pecuniary claims arising from a specified legal relationship. The agreement may be made in writing, by telegram, telex, telecopier, or by any other means of communication which evidences the terms of the agreement by a text. Unless stipulated otherwise, the court agreed upon shall have exclusive jurisdiction.

<sup>2</sup> The agreement shall be void if one party is denied in an improper manner a court to which that party is entitled under Swiss law.

<sup>3</sup> The court agreed upon may not decline its jurisdiction:

- a. If one party has domicile, place of habitual residence, or place of business in the canton of the Swiss court agreed upon; or
- b. If, pursuant to this Code, Swiss law is applicable to the dispute.

**Art. 6**

## V. Appearance by the defendant

In the case of pecuniary claims, the court before which the action is brought shall have jurisdiction if the defendant proceeds to the merits without contesting the court's jurisdiction unless the court may decline jurisdiction pursuant to Article 5, paragraph 3.

**Art. 7**

## VI. Arbitration agreement

If the parties have concluded an arbitration agreement with respect to an arbitrable dispute, the Swiss court before which the action is brought shall decline its jurisdiction unless:

- a. The defendant proceeded to the merits without contesting jurisdiction;
- b. The court finds that the arbitration agreement is null and void, inoperative or incapable of being performed; or
- c. The arbitral tribunal cannot be constituted for reasons for which the defendant in the arbitration proceeding is manifestly responsible.

**Art. 8**

## VII. Counter-claim

The court in which the principal claim is pending shall also decide a counter-claim if there is a factual connection between the claim and the counter-claim.

**Art. 8a**

## VIII. Joinder of parties and joinder of actions

<sup>1</sup> If an action is directed against several joined parties, who may be sued in Switzerland under this Code, the Swiss court having jurisdiction with respect to one defendant shall have jurisdiction with respect to all defendants.

<sup>2</sup> If several actions against a defendant which may be brought in Switzerland under this Code are closely connected, any Swiss court, which has jurisdiction with respect to one of the actions, shall have jurisdiction with respect to all actions.

**Art. 8b**

## IX. Third party notice

In the case of a third party notice the Swiss court hearing the main action shall have jurisdiction also over the third party defendant, if Switzerland has jurisdiction over the third party defendant under this Code.

**Art. 8c**

## X. Ancillary civil action

If an ancillary civil action can be brought in criminal proceedings before a Swiss court, the court seized with the criminal action shall have jurisdiction over the civil action if a Swiss court has jurisdiction over the civil action under this Code.

**Art. 9**

## XI. Lis pendens

<sup>1</sup> If the same parties are engaged in proceedings abroad based on the same causes of action, the Swiss court shall stay the proceeding if it may be expected that the foreign court will, within a reasonable time, render a decision that will be recognizable in Switzerland.

<sup>2</sup> To determine when a court in Switzerland is seized, the date of the first act necessary to institute the action shall be decisive. The initiation of conciliation proceedings shall suffice.

<sup>3</sup> The Swiss court shall dismiss the action as soon as a foreign decision is submitted to it which can be recognized in Switzerland.

**Art. 10**

## XII. Provisional measures

The following authorities shall have jurisdiction to order provisional measures:

- a. The Swiss judicial or administrative authorities which have jurisdiction on the merits or;
- b. The Swiss judicial or administrative authorities at the place where the measure is to be enforced.

**Art. 11**

## XIII. Judicial assistance

## 1. Transmission of requests

Judicial assistance between Switzerland and foreign countries shall be communicated by the Federal Office of Justice.

**Art. 11a**

## 2. Applicable law

<sup>1</sup> Acts of judicial assistance shall be implemented in Switzerland according to Swiss law.

<sup>2</sup> Upon petition of the requesting authority, foreign legal procedure may also be observed or taken into account, if necessary, for the enforcement of a claim abroad unless there are important reasons pertaining to the affected party not to do so.

<sup>3</sup> The Swiss judicial or administrative authorities may issue documents or take an affidavit from an applicant in accordance with a form of foreign law if the Swiss form is not recognized abroad and if a claim meriting protection could not be asserted there.

<sup>4</sup> The Hague Convention on Civil Procedure of March 1, 1954 shall apply to requests for service of documents or the taking of evidence in Switzerland and to requests by Switzerland.

**Art. 11b**

## 3. Cost advance and security for party indemnification

The advance for court costs and the security for indemnification awarded to the other party are governed by the Code of Civil Procedure of December 19, 2008.

**Art. 11c**

## 4. Free legal aid

Persons domiciled abroad shall be granted free legal aid on the same basis as persons domiciled in Switzerland.

**Art. 12**

Repealed

**Section 3: Applicable Law****Art. 13**

## I. Scope of reference

The reference in this Code to a foreign law includes all provisions applicable to the facts of the case under that law. The application of a provision of foreign law is not precluded solely because the provision is attributed the character of public law.



**Art. 14**II. *Renvoi*

<sup>1</sup> If the applicable law refers back to Swiss law or onwards to another foreign law, that reference shall be observed only if this Code so provides.

<sup>2</sup> In matters of civil status, reference back to Swiss law by a foreign law must be observed.

**Art. 15**

## III. Exception clause

<sup>1</sup> The law designated by this Code shall not be applied in those exceptional situations where, in light of all circumstances, it is manifest that the case has only a very limited connection with that law and has a much closer connection with another law.

<sup>2</sup> This article is not applicable in the case of a choice of law by the parties.

**Art. 16**

## IV. Establishment of foreign law

<sup>1</sup> The content of the applicable foreign law shall be established *ex officio*. The assistance of the parties may be requested. In the case of pecuniary claims, the burden of proof on the content of the foreign law may be imposed on the parties.

<sup>2</sup> Swiss law shall apply if the content of the foreign law cannot be established.

**Art. 17**V. Public policy (*ordre public*)

The application of provisions of foreign law shall be precluded if it would produce a result which is incompatible with Swiss public policy (*ordre public*).

**Art. 18**

## VI. Mandatory application of Swiss law

This Code does not prevent the application of those mandatory provisions of Swiss law which, by reason of their particular purpose, are applicable regardless of the law designated by this Code.

**Art. 19**

VII. Taking into account of mandatory provisions of foreign law

<sup>1</sup> If, pursuant to Swiss legal concepts, the legitimate and manifestly preponderant interests of a party so require, a mandatory provision of a law other than that designated by this Code may be taken into account if the circumstances of the case are closely connected with that law.

<sup>2</sup> In deciding whether such a provision must be taken into account, its purpose is to be considered as well as whether its application would result in an adequate decision under Swiss concepts of law.

**Section 4: Domicile, Residence, and Citizenship****Art. 20**

I. Domicile, habitual residence, and place of business of a natural person

<sup>1</sup> For the purposes of this Code, a natural person:

- a. Has his domicile in the State in which he resides with the intention to remain permanently;
- b. Has his place of habitual residence in the State in which he lives for an extended period of time, even if this time period is limited from the outset;
- c. Has his place of business in the State in which his professional business activities are centered.

<sup>2</sup> No person can have more than one domicile at the same time. If a person has no domicile, the place of his habitual residence shall be determinative. The provisions of the Civil Code regarding domicile and residence shall not be applicable.

**Art. 21**

II. Corporate domicile and place of business of companies and trusts

<sup>1</sup> In the case of companies and in the case of trusts pursuant to Article 149a, the registered office shall be deemed to be the domicile.

<sup>2</sup> The registered office of a company is the place specified in the certificate of incorporation or the deed of partnership. In the absence of such designation, the registered office shall be the place where it has its headquarters.

<sup>3</sup> The registered office of a trust is the place of administration designated by the terms of the trust in writing or in another form which enables proof by text. In the absence of such designation, the registered office shall be the place where the trust is administered in fact.

<sup>4</sup> The place of business of a company or trust shall be in the State in which the registered office is located or one of the States in which a branch is located.

## **Art. 22**

### III. Citizenship

The citizenship of a natural person shall be determined by the law of the State of the citizenship in question.

## **Art. 23**

### IV. Multiple Citizenship

<sup>1</sup> If a person is a citizen of one or more States in addition to Switzerland, Swiss citizenship shall be determinative for purposes of jurisdiction based on citizenship.

<sup>2</sup> If a person is a citizen of several States, the citizenship of the State with which the person is most closely connected shall be determinative for purposes of the applicable law unless this Code provides otherwise.

<sup>3</sup> If the recognition of a foreign decision in Switzerland depends upon the citizenship of a person, it is sufficient to consider one of his citizenships.

## **Art. 24**

### V. Stateless persons and refugees

<sup>1</sup> A person shall be regarded as stateless if he is recognized as such under the New York Convention of September 28, 1954 on the legal Status of Stateless Persons or if his relationship with the State of his citizenship has become so attenuated as to be equivalent to statelessness.

<sup>2</sup> A person shall be regarded as a refugee if he is recognized as such under the Statute of Asylum of October 5, 1979.

<sup>3</sup> If this Code is applied to stateless persons or refugees, domicile shall replace citizenship.

## Section 5: Recognition and Enforcement of Foreign Decisions

### Art. 25

#### I. Recognition

##### 1. General rule

A foreign decision shall be recognized in Switzerland:

- a. If the judicial or administrative authorities of the State in which the decision was rendered had jurisdiction;
- b. If no ordinary appeal can be lodged against the decision or the decision is final; and
- c. If there are no grounds for refusal under Article 27.

### Art. 26

#### 2. Jurisdiction of foreign authorities

The foreign authorities have jurisdiction:

- a. If a provision of this Code so provides or, in the absence of such a provision, the defendant was domiciled in the State in which the decision was rendered;
- b. If, in the case of pecuniary claims, the parties have submitted by an agreement valid under this Code to the jurisdiction of the authority that rendered the decision;
- c. If, in the case of pecuniary claims, the defendant proceeded to the merits without objecting to jurisdiction; or
- d. If, in the case of a counter-claim, the authority which rendered the decision had jurisdiction over the principal claim and there is a factual connection between the principal claim and the counterclaim.

### Art. 27

#### 3. Grounds for refusal

<sup>1</sup> A foreign decision shall not be recognized in Switzerland if such recognition would be manifestly incompatible with Swiss public policy (*ordre public*).

<sup>2</sup> A foreign decision shall likewise not be recognized if a party establishes:

- a. That he was not duly summoned, either according to the law of his domicile or according to the law of his place of habitual residence unless he had proceeded to the merits without contesting jurisdiction;
- b. That the decision was rendered in violation of fundamental principles of Swiss procedural law, in particular that he was denied the right to be heard;
- c. That a lawsuit between the same parties and concerning the same causes of action had already been brought or decided in Switzerland or that the lawsuit had proceeded to judgment in a third State and that judgment can be recognized in Switzerland.

<sup>3</sup> Except as herein provided, the foreign decision is not subject to review on the merits.

## **Art. 28**

### II. Enforcement

A decision recognized under Articles 25 to 27 shall be declared enforceable upon application by the interested party.

## **Art. 29**

### III. Procedure

<sup>1</sup> The application for recognition or enforcement must be submitted to the authority having jurisdiction in the canton in which the foreign decision is to be invoked. It must be accompanied by:

- a. A complete and authenticated copy of the decision;
- b. A confirmation that no ordinary appeal can be lodged against the decision or that it is final; and
- c. In the case of a judgment rendered by default, an official document establishing that the defaulting party was duly summoned and that he had the opportunity to enter a defense.

<sup>2</sup> The party opposing recognition and enforcement shall have the right to a hearing; he may introduce evidence.

<sup>3</sup> If a foreign decision is invoked in a proceeding as a preliminary question, the authority to which the application is submitted may itself rule on the recognition.

**Art. 30**

## IV. Court settlement

Articles 25 to 29 shall apply to a court settlement having the same status as a court decision in the State in which it was entered.

**Art. 31**

## V. Non-contentious jurisdiction

Articles 25 to 29 shall apply by analogy to the recognition and enforcement of a decision or a legal instrument resulting from non-contentious jurisdiction.

**Art. 32**

## VI. Entry in the register of births, deaths, and marriages

<sup>1</sup> A foreign decision or a foreign act regarding civil status shall be entered in the register of births, deaths, and marriages pursuant to an order of the cantonal supervisory authority.

<sup>2</sup> The entry shall be authorized when the requirements of Articles 25 to 27 are satisfied.

<sup>3</sup> The persons affected shall have the right to a hearing before the entry is made if it is not established that in the foreign State where the decision was rendered, the procedural rights of the parties were adequately safeguarded.

**Chapter 2: Natural Persons****Art. 33**

## I. General rule

<sup>1</sup> Unless this Code provides otherwise, the Swiss judicial or administrative authorities at the domicile shall have jurisdiction in matters of status of natural persons; they shall apply the law in force at the domicile.

<sup>2</sup> Claims arising from the infringement of personality rights shall be determined according to the provisions of this Code concerning torts (Art. 129 et seq.).

**Art. 34**

## II. Legal capacity

<sup>1</sup> Legal capacity shall be governed by Swiss law.

<sup>2</sup> The beginning and termination of legal personality shall be governed by the law applicable to the legal relationship which presupposes legal capacity.

**Art. 35**

## III. Capacity to act

## 1. General rule

The capacity to act shall be governed by the law of the domicile. A change of domicile shall not affect the capacity to act once that capacity has been acquired.

**Art. 36**

## 2. Estoppel

<sup>1</sup> A party to a legal transaction who lacks capacity under the law of the State of his domicile may not invoke that incapacity if he had capacity under the law of the State in which the transaction was accomplished unless the other party knew or should have known of that incapacity.

<sup>2</sup> This rule is inapplicable to legal transactions concerning family law, the law of inheritance, or real property rights.

**Art. 37**

## IV. Name

## 1. General rule

<sup>1</sup> The name of a person domiciled in Switzerland shall be governed by Swiss law. The name of a person domiciled abroad shall be governed by the law designated by the private international law of the State of his domicile.

<sup>2</sup> A person may request, however, that his name be governed by the law of the State of his citizenship.

**Art. 38**

## 2. Change of name

<sup>1</sup> The Swiss authorities at the domicile of the applicant shall have jurisdiction over a petition to change his name.

<sup>2</sup> A Swiss citizen without a Swiss domicile may file a petition for a change of name with the authorities of the canton of his citizenship.

<sup>3</sup> The conditions and effects of a change of name shall be governed by Swiss law.

**Art. 39**

## 3. Change of name entered abroad

A change of name entered abroad shall be recognized in Switzerland if it is valid in the State of domicile or in the State of citizenship of the applicant.

**Art. 40**

## 4. Entry in the register of births, deaths, and marriages

The name shall be entered in the register of births, deaths, and marriages in accordance with Swiss registration principles.

**Art. 41**

## V. Declaration of disappearance

## 1. Jurisdiction and applicable law

<sup>1</sup> The Swiss courts at the last known domicile of a missing person shall have jurisdiction to enter a declaration of disappearance.

<sup>2</sup> The Swiss courts shall also have jurisdiction to enter a declaration of disappearance if a legitimate interest justifies it.

<sup>3</sup> The conditions and effects of the declaration of disappearance shall be governed by Swiss law.



**Art. 42**

## 2. Declaration of disappearance and death issued abroad

A declaration of disappearance or death issued abroad shall be recognized in Switzerland if it was entered in the State of the last known domicile or the State of citizenship of the person who has disappeared.

**Chapter 3: Matrimonial Law**

## Section 1: Celebration of Marriage

**Art. 43**

## I. Jurisdiction

<sup>1</sup> Swiss authorities shall have jurisdiction to perform the celebration of marriage if either the bride or the bridegroom is domiciled in Switzerland or is a Swiss citizen.

<sup>2</sup> Foreign couples without Swiss domicile may also be permitted to marry in Switzerland by the authority with the jurisdiction if the marriage is recognized in the State of domicile or citizenship of both the bride and bridegroom.

<sup>3</sup> Permission may not be refused solely because a divorce granted or recognized in Switzerland is not recognized abroad.

**Art. 44**

## II. Applicable law

<sup>1</sup> The marriage in Switzerland shall be governed by Swiss law.

<sup>2</sup> Repealed.

<sup>3</sup> Repealed.

**Art. 45**

## III. Marriage celebrated abroad

<sup>1</sup> A marriage validly celebrated abroad shall be recognized in Switzerland.

<sup>2</sup> If the bride or the bridegroom is a Swiss citizen or if both are domiciled in Switzerland, the marriage performed abroad shall be recognized unless the marriage ceremony was performed abroad with the manifest purpose of circumventing the provisions of Swiss law concerning the nullity of marriages.

<sup>3</sup> A marriage validly performed abroad between persons of the same sex shall be recognized in Switzerland as a registered partnership.

#### **Art. 45a**

##### IV. Revocation of the marriage

<sup>1</sup> The Swiss courts at the domicile of one of the spouses or, in the absence of a domicile in Switzerland, those at the place of celebration of marriage or at the place of Swiss citizenship of one of the spouses shall have jurisdiction over actions of revocation of the marriage.

<sup>2</sup> The action shall be governed by Swiss law.

<sup>3</sup> The Articles 62-64 shall apply by analogy to provisional measures and ancillary effects.

<sup>4</sup> Foreign decisions, that establish the revocation of marriage, shall be recognized in Switzerland if they were rendered in the State, where the marriage took place. Article 65 shall apply by analogy, if the action was submitted by one of the spouses.

## Section 2: Effects of Marriage in General

#### **Art. 46**

##### I. Jurisdiction

###### 1. General rule

The Swiss judicial or administrative authorities at the domicile or, in the absence of domicile, those at the place of habitual residence of one of the spouses shall have jurisdiction over actions or to order measures concerning the effects of marriage.

**Art. 47**

## 2. Jurisdiction for Swiss citizens

If the spouses are neither domiciled nor habitually resident in Switzerland and if one of them is a Swiss citizen, the judicial or administrative authorities at the place of Swiss citizenship shall have jurisdiction over actions or to order measures regarding the effects of marriage if the action or request cannot be brought at the domicile or place of habitual residence of one of the spouses or if it is unreasonable to so require.

**Art. 48**

## II. Applicable law

## 1. General rule

<sup>1</sup> The effects of marriage shall be governed by the law of the State in which the spouses are domiciled.

<sup>2</sup> If the spouses are not domiciled in the same State, the effects of marriage shall be governed by the law of the State of the domicile with which the facts of the case are more closely connected.

<sup>3</sup> If the Swiss judicial or administrative authorities at the place of citizenship have jurisdiction under Article 47, they shall apply Swiss law.

**Art. 49**

## 2. Maintenance obligations

Maintenance obligations between spouses shall be governed by The Hague Convention of October 2, 1973 on the Law Applicable to Maintenance Obligations.

**Art. 50**

## III. Foreign decisions or measures

Foreign decisions or measures concerning the effects of marriage shall be recognized in Switzerland if they were rendered in the State of domicile or habitual residence of one of the spouses.

## Section 3: Matrimonial Property Regimes

### Art. 51

#### I. Jurisdiction

The following authorities shall have jurisdiction over actions or to order measures concerning the matrimonial property regimes:

- a. In the event of the dissolution of the matrimonial property regime because of the death of one of the spouses, the Swiss judicial or administrative authorities having jurisdiction over the estate (Art. 86 to 89);
- b. In the event of the dissolution of the matrimonial property regime because of judicial dissolution or separation of the marriage, the Swiss courts having jurisdiction thereover (Art. 59, 60, 63 and 64);
- c. In all other cases, the Swiss judicial or administrative authorities with jurisdiction over actions or measures concerning the effects of marriage (Art. 46, 47).

### Art. 52

#### II. Applicable law

##### 1. Choice of law by the spouses

###### a. General rule

<sup>1</sup> The matrimonial property regime shall be governed by the law chosen by the spouses.

<sup>2</sup> The spouses may choose the law of the State in which they are both domiciled or will be domiciled following the marriage ceremony or the law of the State of which one of the spouses is a citizen. Article 23, paragraph 2, shall not be applicable.

### Art. 53

#### b. Form and effects

<sup>1</sup> The choice of law must be agreed in writing or be clearly evident from the marital agreement. Aside from that requirement, it shall be governed by the chosen law.

<sup>2</sup> The choice of law may be made or changed at any time. If the choice is made following the celebration of marriage, it shall take effect retroactive to the date of the marriage unless the parties agree otherwise.

<sup>3</sup> The chosen law shall remain applicable until the spouses choose another law or revoke their choice.

#### **Art. 54**

##### 2. Absence of a choice of law

###### a. General rule

<sup>1</sup> In the absence of a choice of law, the matrimonial property regime shall be governed by:

- a. The law of the State in which both spouses are domiciled simultaneously or, if this is not the case,
- b. The law of the State in which both spouses were last domiciled simultaneously.

<sup>2</sup> If the spouses were never domiciled in the same State simultaneously; the law of their common State of Citizenship shall be applicable.

<sup>3</sup> Spouses who were never domiciled in the same State simultaneously and who do not have a common citizenship shall be subject to the Swiss regime of separate property.

#### **Art. 55**

##### b. Alteration and retroactive effect in case of change of domicile

<sup>1</sup> If the spouses transfer their domicile from one State to another, the law of the new domicile shall be applicable with retroactive effect from the date of the marriage. The spouses may preclude the retroactive effect by written agreement.

<sup>2</sup> The change of domicile shall have no effect on the applicable law if the parties have agreed in writing to maintain the former law or if they are subject to a marriage contract.

#### **Art. 56**

##### 3. Form of marital agreement

The marital agreement shall be valid as to form if it conforms to the law applicable to the marital agreement or to the law at the place of its conclusion.

**Art. 57**

## 4. Effects on third parties

<sup>1</sup> The effects of the matrimonial property regime on the legal relationship between a spouse and a third party shall be governed by the law of the State in which the spouse was domiciled when the legal relationship commenced.

<sup>2</sup> If, however, the third party knew or should have known the law that governed the matrimonial property regime when the legal relationship commenced, that law shall be applicable.

**Art. 58**

## III. Foreign decisions

<sup>1</sup> Foreign decisions concerning the matrimonial property regime shall be recognized in Switzerland:

- a. If they were rendered or are recognized in the State of domicile of the defendant spouse;
- b. If they were rendered or are recognized in the State of domicile of the plaintiff spouse, provided that the defendant spouse was not domiciled in Switzerland;
- c. If they were rendered or are recognized in the State whose law is applicable to the matrimonial property regime under this Code; or
- d. In matters related to real property if they were rendered or are recognized in the State in which the real property is located.

<sup>2</sup> The recognition of decisions concerning the matrimonial property regime rendered in connection with measures protecting the marital union or following the death of one of the spouses, a declaration of nullity of the marriage, a divorce, or a separation shall be governed by the provisions of this Code relating to the effects of marriage, divorce, or inheritance (Art. 50, 65 and 96).

## Section 4: Divorce and Separation

### **Art. 59**

#### I. Jurisdiction

##### 1. General rule

The following authorities shall have jurisdiction over actions of divorce or separation:

- a. The Swiss courts at the defendant's domicile;
- b. The Swiss courts at the plaintiff's domicile if he has resided in Switzerland for one year or is a Swiss citizen.

### **Art. 60**

#### 2. Jurisdiction for Swiss citizens

If the spouses are not domiciled in Switzerland and if one of them is a Swiss citizen, the courts at the place of Swiss citizenship shall have jurisdiction over an action of divorce or separation if the action cannot be brought at the domicile of one of the spouses or if it is unreasonable to so require.

### **Art. 61**

#### II. Applicable law

<sup>1</sup> Divorce and separation shall be governed by Swiss law.

<sup>2</sup> If, however, both spouses have the same foreign citizenship and only one is domiciled in Switzerland, the law of the State of their common citizenship shall be applicable.

<sup>3</sup> If the law of the State of common citizenship does not permit the dissolution of the marriage or imposes extraordinary severe conditions, Swiss law shall be applicable if one of the spouses is also a Swiss citizen or one of the spouses has resided in Switzerland for the two years immediately preceding.

<sup>4</sup> If the courts at the place of Swiss citizenship have jurisdiction pursuant to Article 60, they shall apply Swiss law.

**Art. 62**

## III. Provisional measures

<sup>1</sup> The Swiss court in which an action for divorce or separation is pending shall have jurisdiction to enter provisional measures unless its lack of jurisdiction on the merits is manifest or has been decided in a final judgment.

<sup>2</sup> Provisional measures shall be governed by Swiss law.

<sup>3</sup> The provisions of this Code concerning maintenance obligations between spouses (Art. 49), the effects of parent-child relationship (Art. 82 and 83), and the protection of minors (Art. 85) take precedence.

**Art. 63**

## IV. Ancillary effects

<sup>1</sup> The Swiss courts with jurisdiction over an action of divorce or separation shall also have jurisdiction over all matters ancillary to the divorce or separation. The provisions of this Code concerning the protection of minors (Art. 85) take precedence.

<sup>1bis</sup> The Swiss courts shall have exclusive jurisdiction over compensation for pension entitlements against a Swiss occupational pension fund.

<sup>2</sup> Swiss law shall govern the ancillary effects of divorce or separation. The provisions of this Code concerning names (Art. 37 to 40), maintenance obligations between spouses (Art. 49), the matrimonial property regime (Art. 52 to 57), the effects of parent-child relationship (Art. 82 and 83), and the protection of minors (Art. 85) take precedence.

**Art. 64**

## V. Amendments or modifications of a decision

<sup>1</sup> Swiss courts shall have jurisdiction over an action to amend or modify a decision of divorce or separation if they entered the decision or have jurisdiction under Art. 59 or 60. The provisions of this Code concerning the protection of minors (Art. 85) take precedence.

<sup>1bis</sup> The Swiss courts shall have exclusive jurisdiction over compensation for pension entitlement against a Swiss occupational pension fund. In the absence of jurisdiction set forth in paragraph 1 the Swiss courts at the domicile of the occupational pension fund have jurisdiction.

<sup>2</sup> An action to amend or modify a decision of divorce or separation shall be governed by Swiss law. The provisions of this Code concerning names (Art. 37 to 40), maintenance obligations



between spouses (Art. 49), the matrimonial property regime (Art. 52 to 57), the effects of parent-child relationship (Art. 82 and 83), and the protection of minors (Art. 85) take precedence.

## **Art. 65**

### VI. Foreign decisions

<sup>1</sup> Foreign decisions of divorce or separation shall be recognized in Switzerland if they were rendered in the State of domicile or habitual residence or in the State of citizenship of one spouse or if they are recognized in one of those States.

<sup>2</sup> However, a decision rendered in a State of which neither spouse, or only the plaintiff spouse, is a citizen shall be recognized in Switzerland only:

- a. If, at the time the petition was filed, at least one spouse was domiciled or had his place of habitual residence in that State and the defendant spouse was not domiciled in Switzerland;
- b. If the defendant spouse has submitted to the jurisdiction of the foreign court without reservation; or
- c. If the defendant spouse has expressly consented to the recognition of the decision in Switzerland.

## **Chapter 3a: Registered Partnerships**

### **Art. 65a**

#### I. Application of Chapter 3

The provisions of Chapter 3 shall apply by analogy to registered partnerships, with the exception of Article 43 paragraph 2.

### **Art. 65b**

#### II. Jurisdiction upon dissolution at place of registration

If the partners are not domiciled in Switzerland and neither partner is a Swiss citizen, the Swiss courts at the place of registration shall have jurisdiction over actions or petitions for dissolution of the registered partnership if it is impossible or unreasonable to file the action of petition at the place of domicile of one of the persons.

**Art. 65c**

## III. Applicable law

<sup>1</sup> If the law that is applicable pursuant to the provisions of Chapter 3 is not familiar with any rules on registered partnerships, Swiss law shall apply, subject to Article 49.

<sup>2</sup> In addition to the rights described in Article 52 paragraph 2, the partners may choose the law of the State in which the partnership is registered.

**Art. 65d**

## IV. Decisions or measures of the State of registration

Foreign decisions or measures shall be recognized in Switzerland if:

- a. They are issued in the State in which the partnership is registered; and
- b. It was impossible or unreasonable to file the action or petition in a State whose jurisdiction is recognized in Switzerland pursuant to the provisions of Chapter 3.

**Chapter 4: Parent-child relationship**

## Section 1: The establishment of a parent-child relationship by descent

**Art. 66**

## I. Jurisdiction

## 1. General rule

The Swiss courts at the place of habitual residence of the child or at the domicile of the mother or the father shall have jurisdiction over actions to establish or contest a parent-child relationship.

**Art. 67**

## 2. Jurisdiction for Swiss citizens

If the parents are not domiciled in Switzerland and the child is not habitually resident in Switzerland, the courts at the place of Swiss citizenship of the mother or the father shall have jurisdiction over actions to establish or contest a parent-child relationship if the action cannot be brought at the domicile of one of the parents or at the place of habitual residence of the child or if it is unreasonable to so require.

**Art. 68**

## II. Applicable law

## 1. General rule

<sup>1</sup> The creation, establishment, and contest of a parent-child relationship shall be governed by the law of the State of the habitual residence of the child.

<sup>2</sup> If, however, neither the father nor the mother is domiciled in the State of habitual residence of the child and if the child and the parents are citizens of the same State, the law of that State shall be applicable.

**Art. 69**

## 2. Time of determination

<sup>1</sup> The law applicable to the creation, establishment, or contest of a parent-child relationship shall be determined as of the date of birth.

<sup>2</sup> However, in the case of judicial establishment or judicial contest of a parent-child relationship, the date of the commencement of an action shall be determinative if a preponderant interest of the child so requires.

**Art. 70**

## III. Foreign decisions

Foreign decisions concerning the establishment or the contest of a parent-child relationship shall be recognized in Switzerland if they were rendered in the State of habitual residence or citizenship of the child or in the State of domicile or citizenship of the mother or the father.

**Section 2: Acknowledgment****Art. 71**

## I. Jurisdiction

<sup>1</sup> The Swiss authorities at the place of birth or habitual residence of the child as well as the authorities at the place of domicile or citizenship of the mother or the father shall have jurisdiction to receive an act of acknowledgment of a parent-child relationship.

<sup>2</sup> In the case of a judicial proceeding in which a parent-child relationship is relevant, the judge

hearing the action may receive an act of acknowledgment.

<sup>3</sup> The same courts that have jurisdiction over the establishment or contest of a parent-child relationship (Art. 66 and 67) shall have jurisdiction over the contest of an acknowledgment.

## **Art. 72**

### II. Applicable law

<sup>1</sup> Acknowledgment in Switzerland may be effected in accordance with the law of the State of habitual residence or citizenship of the child or the law of the State of domicile or citizenship of the mother or the father. The date of acknowledgment is determinative.

<sup>2</sup> The form of acknowledgment in Switzerland shall be governed by Swiss law.

<sup>3</sup> The contest of an acknowledgment shall be governed by Swiss law.

## **Art. 73**

### III. Foreign acknowledgment and contest of acknowledgment

<sup>1</sup> An act of acknowledgment of a child made abroad shall be recognized in Switzerland if it is valid in the State of habitual residence or citizenship of the child or in the State of domicile or citizenship of the mother or the father.

<sup>2</sup> Foreign decisions concerning the contest of acknowledgment shall be recognized in Switzerland when they are rendered in one of the States set forth in paragraph 1.

## **Art. 74**

### IV. Legitimation

Article 73 shall apply by analogy to a foreign legitimation.

## Section 3: Adoption

### **Art. 75**

#### I. Jurisdiction

##### 1. General rule

<sup>1</sup> The Swiss judicial or administrative authorities at the domicile of the adopting person or the adopting spouses shall have jurisdiction to grant the adoption.

<sup>2</sup> The same courts that have jurisdiction over the establishment or contest of a parent-child relationship (Art. 66 and 67) shall have jurisdiction over the contest of adoption.

### **Art. 76**

#### 2. Jurisdiction for Swiss citizens

If the adopting person or the adopting spouses are not domiciled in Switzerland and if one of them is a Swiss citizen, the judicial or administrative authorities at the place of Swiss citizenship shall have jurisdiction to grant the adoption if it is impossible or unreasonable to require that the adoption procedure be conducted at their foreign domicile.

### **Art. 77**

#### II. Applicable law

<sup>1</sup> The conditions for adoption in Switzerland shall be governed by Swiss law.

<sup>2</sup> If it becomes apparent that an adoption would not be recognized in the State of domicile or citizenship of the adopting person or the adopting spouses and the child would be severely prejudiced, the authorities shall also take into account the requirements of the law of the State in question. If the recognition of the adoption remains uncertain, the adoption shall not be granted.

<sup>3</sup> An action to annul an adoption pronounced in Switzerland shall be governed by Swiss law. An adoption pronounced abroad may only be annulled in Switzerland if there are grounds for doing so under Swiss law.

**Art. 78**

## III. Foreign adoptions and similar acts

<sup>1</sup> Adoptions pronounced abroad shall be recognized in Switzerland if they were pronounced in the State of domicile or citizenship of the adopting person or the adopting spouses.

<sup>2</sup> Adoptions or similar acts under foreign law which have effects essentially different from a parent-child relationship under Swiss Law shall only be recognized in Switzerland with the effects that attach to them in the State in which such acts were pronounced.

## Section 4: Effects of parent-child relationship

**Art. 79**

## I. Jurisdiction

## 1. General rule

<sup>1</sup> The Swiss courts at the place of habitual residence or domicile of the child or, in the absence of such domicile, those at the place of habitual residence of the defendant parent shall have jurisdiction over actions regarding the relations between parent and child, in particular, maintenance of the child.

<sup>2</sup> The provisions of this Code concerning names (Art. 33, 37 to 40), the protection of minors (Art. 85), and the law of inheritance (Art. 86 to 89) take precedence.

**Art. 80**

## 2. Jurisdiction for Swiss citizens

If neither the child nor the defendant parent is domiciled or habitually resident in Switzerland and if one of them is a Swiss citizen, the courts at the place of Swiss citizenship shall have jurisdiction.

**Art. 81**

## 3. Claims of third parties

The Swiss courts designated under Articles 79 and 80 shall also have jurisdiction to decide:

- a. Claims of authorities who have made advances for the child's maintenance;

- b. Claims of the mother for maintenance and reimbursement of expenses occasioned by the birth.

## **Art. 82**

### II. Applicable law

#### 1. General rule

<sup>1</sup> The relations between parent and child shall be governed by the law of the State of the habitual residence of the child.

<sup>2</sup> However, if neither parent is domiciled in the State of habitual residence of the child and if the parents and the child are citizens of the same State, the law of that State shall be applicable.

<sup>3</sup> The provisions of this Code concerning names (Art. 33, 37 to 40), the protection of minors (Art. 85), and the law of inheritance (Art. 90 to 95) take precedence.

## **Art. 83**

### 2. Maintenance

<sup>1</sup> The maintenance obligations between parent and child shall be governed by the Hague Convention of October 2, 1973 on the Law Applicable to Maintenance Obligations.

<sup>2</sup> To the extent that the mother's claims for maintenance and reimbursement of the expenses occasioned by the birth are not covered by the Convention, the provisions of the Convention shall apply by analogy.

## **Art. 84**

### III. Foreign decisions

<sup>1</sup> Foreign decisions regarding the relations between parent and child shall be recognized in Switzerland if they were rendered in the State of habitual residence of the child or in the State of domicile or habitual residence of the defendant parent.

<sup>2</sup> The provisions of this Code concerning names (Art. 39), the protection of minors (Art. 85), and the law of inheritance (Art. 96) take precedence.

## Chapter 5: Guardianship and Other Protective Measures

### Art. 85

<sup>1</sup> In matters affecting the protection of minors the Hague Convention of October 19, 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children shall govern the jurisdiction of the Swiss judicial or administrative authorities, the applicable law, and the recognition and enforcement of foreign decisions or measures.

<sup>2</sup> In matters affecting the protection of adults The Hague Convention of January 13, 2000 on the International Protection of Adults shall govern the jurisdiction of the Swiss judicial or administrative authorities, the applicable law, and the recognition and enforcement of foreign decisions or measures.

<sup>3</sup> The Swiss judicial or administrative authorities shall in addition have jurisdiction, if this is essential for the purpose of protecting a person or his property.

<sup>4</sup> Measures, which have been adopted in a country, which is not a party to the conventions specified in paragraphs 1 and 2, will be recognized if such measures have been adopted in the country of the ordinary residence of the child or the adult or are recognized therein.

## Chapter 6: Inheritance

### Art. 86

#### I. Jurisdiction

##### 1. General rule

<sup>1</sup> The Swiss judicial or administrative authorities at the last domicile of the decedent shall have jurisdiction in probate proceedings and inheritance disputes.

<sup>2</sup> Exclusive jurisdiction claimed by a State with respect to real property located therein takes precedence.

### Art. 87

#### 2. Jurisdiction for Swiss citizens

<sup>1</sup> The Swiss judicial or administrative authorities at the place of the Swiss citizenship of the decedent shall have jurisdiction over the estate of a Swiss citizen domiciled abroad at death to the extent not dealt with by the foreign authorities.



<sup>2</sup> The Swiss authorities at the place of Swiss citizenship shall always have jurisdiction if, by will or by testamentary contract, a Swiss citizen having had his last domicile abroad has submitted his entire estate or the part located in Switzerland to Swiss jurisdiction or the Swiss law. Article 86, paragraph 2, takes precedence.

### **Art. 88**

#### 3. Jurisdiction for property in Switzerland

<sup>1</sup> If a foreigner domiciled abroad at death leaves property located in Switzerland, the Swiss judicial or administrative authorities at the place where the property is located shall have jurisdiction to regulate that part of the estate in Switzerland to the extent not dealt with by the foreign authorities.

<sup>2</sup> If there is property at more than one place in Switzerland, the Swiss judicial or administrative authorities first called upon shall have jurisdiction.

### **Art. 89**

#### 4. Protective measures

If the decedent had his last domicile abroad and left property located in Switzerland, the Swiss authorities at the place where such property is located shall order provisional measures necessary to protect the property.

### **Art. 90**

#### II. Applicable law

##### 1. Last domicile in Switzerland

<sup>1</sup> The estate of a person last domiciled in Switzerland shall be governed by Swiss law.

<sup>2</sup> A foreigner may, however, submit his estate by will or by testamentary contract to the law of the States of which he is a citizen. The choice shall be void if the decedent was no longer a citizen of the chosen State at his death or if he had acquired Swiss citizenship.

### **Art. 91**

##### 2. Last domicile abroad

<sup>1</sup> The estate of a person who had his last domicile abroad shall be governed by the law designated by the private international law rules of the State in which the decedent was domiciled.

<sup>2</sup> To the extent that Swiss judicial or administrative authorities have jurisdiction under Article 87, the estate of a Swiss decedent who had his last domicile abroad shall be governed by Swiss law unless the decedent had expressly reserved the law of his last domicile by will or testamentary contract.

### **Art. 92**

#### 3. Scope of the law applicable to the estate and its devolution

<sup>1</sup> The law applicable to the estate shall determine what belongs to the estate, who is entitled thereto and to what extent, who shall meet the debts of the estate, the legal remedies and measures that may be invoked and under what conditions.

<sup>2</sup> The procedures for execution shall be governed by the law of the State of the authority having jurisdiction. In particular, that law shall govern protective measures and the devolution of the estate, including the execution of the will.

### **Art. 93**

#### 4. Form

<sup>1</sup> The form of the will shall be governed by The Hague Convention of October 5, 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions.

<sup>2</sup> The Convention shall apply by analogy to the form of other dispositions by reason of death.

### **Art. 94**

#### 5. Testamentary capacity

A person may make a disposition by reason of death if, at the time of disposition, he had testamentary capacity under the law of the State of his domicile or habitual residence or under the law of one of the States of which he was citizen.

### **Art. 95**

#### 6. Testamentary contracts and mutual dispositions by reason of death

<sup>1</sup> A testamentary contract shall be governed by the law of the State in which the disposing party was domiciled when the contract was executed.

<sup>2</sup> If, in a testamentary contract, the disposing party subjects his entire estate to the law of the State of his citizenship, that law shall apply in place of the law of his domicile.

<sup>3</sup> Mutual dispositions by reason of death are valid if they conform to the law of the State of domicile of each of the disposing parties or the law of the State of their common citizenship if that law was chosen.

<sup>4</sup> The provisions of this Code concerning form and testamentary capacity (Art. 93 and 94) take precedence.

## **Art. 96**

### III. Foreign decisions, measures, legal instruments, and rights

<sup>1</sup> Foreign decisions, measures, and instruments concerning an estate, as well as rights which are derived from an estate probated abroad, shall be recognized in Switzerland:

- a. If they were rendered, taken, drawn up, or established in the State of the last domicile of the decedent or pursuant to the law chosen by the decedent or if they are recognized in one of those States; or
- b. In the case of decisions concerning real property, when they were rendered, taken, drawn up, or established in the State in which the property is located or if they are recognized in that State.

<sup>2</sup> If a State claims exclusive jurisdiction over real property of a decedent located in its territory, only its decisions, measures, or documents shall be recognized.

<sup>3</sup> Protective measures issued in the State in which property of the decedent is located shall be recognized in Switzerland.

## **Chapter 7: Property**

### **Art. 97**

#### I. Jurisdiction

##### 1. Real property

The courts at the place in Switzerland where the real property is located shall have exclusive jurisdiction over actions concerning interests in that real property.

**Art. 98**

## 2. Movable property

<sup>1</sup> The Swiss courts at the domicile or, in the absence of domicile, the Swiss courts at the place of habitual residence of the defendant shall have jurisdiction over actions concerning interests in movable property.

<sup>2</sup> In addition the Swiss courts at the place where the movable property is situated, shall have jurisdiction.

**Art. 98a**

With respect to actions for the repatriation of cultural property pursuant to Article 9 of the Federal Act on the International Transfer of Cultural Property of June 20, 2003, the court at the domicile or registered office of the defendant or at the place where the cultural property is located shall have jurisdiction.

**Art. 99**

## II. Applicable law

## 1. Real property

<sup>1</sup> Interests in real property shall be subject to the law of the place where the property is located.

<sup>2</sup> Claims arising from nuisances emanating from real property shall be governed by the provisions of this Code concerning torts (Art. 138).

**Art. 100**

## 2. Movable property

## a. General rule

<sup>1</sup> The acquisition and loss of an interest in movable property shall be governed by the law of the place where the property was located at the time when the facts occurred from which the acquisition or the loss derive.

<sup>2</sup> The extent and the exercise of interests in movable property shall be governed by the law of the place where the property is located.

**Art. 101**

## b. Property in transit

The acquisition and the loss of interests in movable property in transit based on a legal transaction shall be governed by the law of the State of destination.

**Art. 102**

## c. Property arriving in Switzerland

<sup>1</sup> If an item of movable property is transported to Switzerland from abroad and if an interest in such property had not already been acquired or lost abroad, the facts occurring abroad shall be deemed to have occurred in Switzerland.

<sup>2</sup> If an item of movable property arrives in Switzerland over which a retention of title was validly established abroad which does not satisfy the requirements of Swiss law, that retention shall nevertheless remain valid for three months.

<sup>3</sup> Such retention of title shall not be applied against a bona fide third party.

**Art. 103**

## d. Retention of title to property being exported

Retention of title to an item of movable property intended for export shall be governed by the law of the State of destination.

**Art. 104**

## e. Choice of law by the parties

<sup>1</sup> The parties may submit the acquisition and loss of an interest in movable property to the law of the State of shipment or the State of destination or to the law applicable to the underlying legal transaction.

<sup>2</sup> The choice of law shall not be applied against a third party.

**Art. 105**

## 3. Special rules

## a. Pledge of claims, securities, and other rights

<sup>1</sup> The pledge of claims, securities, and other rights shall be governed by the law chosen by the parties. The choice of law shall not be applied against a third party.

<sup>2</sup> In the absence of a choice of law, the pledge of claims and securities shall be governed by the law of the State of the habitual residence of the secured creditor; the pledge of other rights shall be governed by the law applicable to such other rights.

<sup>3</sup> Only the law applicable to the pledged right may be applied against the debtor.

**Art. 106**

## b. Title documents

<sup>1</sup> The law designated in a document of title shall determine whether such document represents title to the merchandise. In the absence of such designation, the law of the State of the place of business of the issuer shall govern.

<sup>2</sup> If the document represents title to the merchandise, title to the certificate and to the merchandise shall be governed by the law applicable to the title document as an item of movable property.

<sup>3</sup> If several parties assert an interest in the merchandise, one directly, the others by virtue of a title document, the law applicable to the merchandise itself shall determine whose right prevails.

**Art. 107**

## c. Means of transportation

The provisions of other statutes concerning interests in ships, aircraft, and other means of transportation shall take precedence.

**Art. 108**

## III. Foreign decisions

<sup>1</sup> Foreign decisions concerning interests in real property shall be recognized in Switzerland if they were rendered in the State in which the real property is located or if they are recognized in that State.

<sup>2</sup> Foreign decisions concerning interests in movable property shall be recognized in Switzerland:

- a. If they were rendered in the State of domicile of the defendant;
- b. If they were rendered in the State in which the property was located, provided that the defendant had his place of habitual residence there; or
- c. If they were rendered in the State of the venue agreed upon.

## **Chapter 7a: Intermediary-held Securities**

### **Art. 108a**

#### I. Concept

Intermediary-held securities shall mean securities held in custody with an intermediary within the meaning of the Hague Convention of July 5, 2006 on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary.

### **Art. 108b**

#### II. Jurisdiction

<sup>1</sup> The Swiss courts at the domicile of the defendant shall have jurisdiction over actions concerning intermediary-held securities, or, in the absence of such domicile, the courts at his habitual place of residence.

<sup>2</sup> In addition, the courts at the place of a business establishment shall have jurisdiction over actions concerning intermediary-held securities based on the activity of such business establishment in Switzerland.

### **Art. 108c**

#### III. Applicable law

The Hague Convention of July 5, 2006 on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary shall apply to intermediary-held securities.

**Art. 108d**

## IV. Foreign decisions

Foreign decisions concerning intermediary-held securities shall be recognized in Switzerland, if they:

- a. were rendered in the State where the defendant had been domiciled or had habitual place of residence; or
- b. were rendered in the State where the defendant had his business establishment, and they pertain to claims stemming from the operation of such business establishment.

**Chapter 8: Intellectual Property Rights****Art. 109**

## I. Jurisdiction

<sup>1</sup> The Swiss courts at the domicile of the defendant shall have jurisdiction over actions concerning the validity or registration of intellectual property rights in Switzerland. If the defendant is not domiciled in Switzerland, the Swiss courts at the place of business of the representative of record or, in the absence of such representative, the courts at the place where the Swiss registry has its office, shall have jurisdiction.

<sup>2</sup> The Swiss courts of the domicile of the defendant, or, in the absence of such domicile, the courts at his habitual place of residence, shall have jurisdiction over actions concerning the breach of intellectual property rights. The Swiss courts at the place of the act or the resultant injury and, in the case of actions based on the activity of a business establishment in Switzerland, the courts of the place of such business establishment, shall also have jurisdiction.

**Art. 110**

## II. Applicable law

<sup>1</sup> Intellectual property rights shall be governed by the law of the State in which protection of the intellectual property is sought.

<sup>2</sup> In the case of claims arising out of infringement of intellectual property rights, the parties may always agree, after the act causing damage has occurred, that the law of the forum shall be applicable.

<sup>3</sup> Contracts concerning intellectual property rights shall be governed by the provisions of this Code concerning the law applicable to contracts (Art. 122).



**Art. 111**

## III. Foreign decisions

<sup>1</sup> Foreign decisions concerning intellectual property rights shall be recognized in Switzerland:

- a. If the decision was rendered in the State of domicile of the defendant; or
- b. If the decision was rendered at the place of the act or the resultant injury provided that the defendant was not domiciled in Switzerland.

<sup>2</sup> Foreign decisions concerning the validity or the registration of intellectual property rights shall only be recognized if they were rendered in the State under the law of which protection of the intellectual property is claimed or if they are recognized there.

**Chapter 9: Law of Obligations**

## Section 1: Contracts

**Art. 112**

## I. Jurisdiction

## 1. Domicile and place of business

<sup>1</sup> The Swiss courts at the defendant's domicile or, in the absence of domicile, those at the place of habitual residence of the defendant shall have jurisdiction over actions arising from contracts.

<sup>2</sup> In addition, the Swiss courts at the place where the defendant has his place of business shall also have jurisdiction over actions arising out of the activities of that place of business.

**Art. 113**

## 2. Place of performance

If the characteristic obligation of the contract is to be performed in Switzerland, an action may also be brought before the Swiss court at the place where the obligation is to be performed.

**Art. 114**

## 3. Consumer contracts

<sup>1</sup> An action brought by a consumer relating to a contract that complies with Article 120, paragraph 1, may be filed, at the election of the consumer, before the Swiss court:

- a. At the domicile or, in the absence of domicile, at the place of habitual residence of the consumer; or
- b. At the domicile or, in the absence of domicile, at the place of habitual residence of the supplier.

<sup>2</sup> The consumer may not waive in advance the venue at his domicile or place of habitual residence.

**Art. 115**

## 4. Employment contracts

<sup>1</sup> The Swiss courts at the domicile of the defendant or at the place where the employee habitually carries out his work shall have jurisdiction over actions relating to an employment contract.

<sup>2</sup> In the case of actions brought by an employee, the Swiss courts at his domicile or the place of his habitual residence shall have jurisdiction.

<sup>3</sup> Moreover, in the case of actions concerning the employment and wage conditions applicable to the performance of work, the Swiss courts at the place to which the employee was transferred from abroad for a limited period of time in order to perform all or part of his work shall have jurisdiction.

**Art. 116**

## II. Applicable law

## 1. In general

## a. Choice of law by the parties

<sup>1</sup> The contract shall be governed by the law chosen by the parties.

<sup>2</sup> The choice of law must be express or clearly evident from the terms of the contract or the circumstances. In all other respects it shall be governed by the law chosen.

<sup>3</sup> The choice of law may be made or modified at any time. If made or modified following the conclusion of the contract, it shall be retroactive to the time the contract was concluded. The rights of third parties shall take precedence.

**Art. 117**

b. Absence of a choice of law

<sup>1</sup> In the absence of a choice of law, the contract shall be governed by the law of the State with which it is most closely connected.

<sup>2</sup> It is presumed that the closest connection exists with the State in which the party who must perform the characteristic obligation is habitually resident or, if the contract was concluded in the exercise of a professional or commercial activity, where such party has his place of business.

<sup>3</sup> In particular, the following shall be considered the characteristic obligation:

- a. The obligation of the alienator, in contracts of alienation;
- b. The obligation of the party transferring the use of a thing or a right, in the case of contracts concerning the use of a thing or a right;
- c. The service provided, in the case of mandates, work and labor contracts, and similar service contracts;
- d. The obligation of the custodian, in custodial contracts;
- e. The obligation of the guarantor or the surety, in guaranty or surety contracts.

**Art. 118**

2. In particular

a. Sale of movable property

<sup>1</sup> The sale of movable property shall be governed by The Hague Convention of June 15, 1955 on the Law Applicable to the International Sales of Goods.

<sup>2</sup> Article 120 takes precedence.

**Art. 119**

b. Real property

<sup>1</sup> Contracts concerning real property or its use shall be governed by the law of the State in which it is located.

<sup>2</sup> A choice of law by the parties is permitted.

<sup>3</sup>The form of the contract shall be governed by the law of the State in which the real property is located unless that law permits the application of another law. In the case of real property located in Switzerland, the form shall be governed by Swiss law.

## **Art. 120**

### c. Consumer contracts

<sup>1</sup> Contracts relating to the provision of ordinary goods and services intended for the personal or family use of the consumer and which are not associated with the professional or commercial activities of the consumer shall be governed by the law of the State in which the consumer is habitually resident:

- a. If the supplier received the order in that State;
- b. If the conclusion of the contract was preceded in that State by an offer or an advertisement and the consumer performed there the necessary acts to conclude the contract; or
- c. If the consumer was induced by the supplier to go abroad to place his order there.

<sup>2</sup> A choice of law by the parties is precluded.

## **Art. 121**

### d. Employment contracts

<sup>1</sup> An employment contract shall be governed by the law of the State in which the employee habitually carries out his work.

<sup>2</sup> If the employee habitually carries out his work in several States, the employment contract shall be governed by the law of the State of the place of business or, in the absence of a place of business, at the domicile or place of habitual residence of the employer.

<sup>3</sup> The parties may subject the employment contract to the law of the State in which the employee is habitually resident or in which the employer has his place of business, his domicile, or his place of habitual residence.

## **Art. 122**

### e. Contracts concerning intellectual property rights

<sup>1</sup> Contracts concerning intellectual property rights shall be governed by the law of the State in which the party transferring the intellectual property right or granting the use thereof has his place of habitual residence.

<sup>2</sup> A choice of law by the parties is permitted.

<sup>3</sup> Contracts between an employer and an employee regarding rights to intellectual property which the employee has created in the course of his employment shall be governed by the law applicable to the employment contract.

### **Art. 123**

#### 3. Provisions in common

##### a. Failure to respond to an offer

The party who fails to respond to an offer to conclude a contract may request that the effects of his silence be governed by the law of the State in which he has place of habitual residence.

### **Art. 124**

#### b. Form

<sup>1</sup> A contract is valid as to form if it conforms with the law applicable to the contract or to the law of the place where it is concluded.

<sup>2</sup> The form of a contract concluded between persons in different States is valid if it conforms with the law of one of those States.

<sup>3</sup> The form of the contract shall be governed exclusively by the law applicable to the contract if, to protect a party, that law prescribes compliance with a specific form unless that law permits the application of another law.

### **Art. 125**

#### c. Performance and inspection procedures

Performance and inspection procedures shall be governed by the law of the State in which they actually occur.

### **Art. 126**

#### d. Agency

<sup>1</sup> If agency is based on contract, the relationship between the principal and the agent shall be governed by the law applicable to their contract.

<sup>2</sup> The conditions under which acts of the agent bind the principal in relation to third parties shall be governed by the law of the State in which the agent has his place of business or, in the absence thereof or if that place is not evident to the third party, the law of the State in which the agent primarily acts in the particular case.

<sup>3</sup> If the agent has an employment contract with the principal and if he has no place of business of his own, his place of business shall be deemed to be the registered office of the principal.

<sup>4</sup> The law designated in paragraph 2 shall also apply to the relationship between an unauthorized agent and a third party.

## Section 2: Unjust enrichment

### **Art. 127**

#### I. Jurisdiction

The Swiss courts at the domicile of the defendant or, in the absence of domicile, those at his place of habitual residence or at his place of business shall have jurisdiction over actions with respect to unjust enrichment. In addition, in the case of actions based on the activity of a business establishment in Switzerland, the courts of the place of such business establishment shall have jurisdiction.

### **Art. 128**

#### II. Applicable law

<sup>1</sup> Claims of unjust enrichment shall be governed by the law which governs the existing or alleged legal relationship from which the enrichment results.

<sup>2</sup> If there is no such legal relationship, claims of unjust enrichment shall be governed by the law of the State in which the enrichment occurred; the parties may agree that the law of the forum shall apply.

## Section 3: Torts

### **Art. 129**

#### I. Jurisdiction

##### 1. In general

The Swiss courts at the domicile of the defendant or, in the absence of domicile, those at his place of habitual residence or at his place of business shall have jurisdiction over actions in tort. The Swiss courts at the place of the act or the resultant injury and, in the case of actions based on the activity of a business establishment in Switzerland, the courts of the place of such business establishment, shall also have jurisdiction.

### **Art. 130**

#### 2. In particular

<sup>1</sup> The Swiss courts at the place where the event causing damage occurred shall have jurisdiction over actions concerning damage caused by a nuclear installation or the transportation of nuclear substances.

<sup>2</sup> If that place cannot be determined, the action may be brought:

- a. If the operator of a nuclear installation is liable, before the Swiss courts at the place where the nuclear installation is located;
- b. If the holder of a transportation license is liable, before the Swiss courts at the place where the holder is domiciled or has elected domicile.

<sup>3</sup> Actions to enforce the right to information against the holder of a data collection may be brought before the courts named in Article 129 or before the Swiss courts at the place where the data collection is maintained or used.

### **Art. 131**

#### 3. Direct action against insurer

A direct action against the insurer may be brought before the Swiss courts at the place where the insurer has his place of business or at the place in which the act that caused injury arose or the resultant injury occurred.

**Art. 132**

## II. Applicable law

## 1. In general

## a. Choice of law by the parties

The parties may agree any time after the event causing damage has occurred that the law of the forum shall be applicable.

**Art. 133**

## b. Absence of a choice of law

<sup>1</sup> If the tortfeasor and injured party have their place of habitual residence in the same State, claims founded in tort shall be governed by the law of that State.

<sup>2</sup> If the tortfeasor and the injured party do not have their place of habitual residence in the same State, the claims shall be governed by the law of the State in which the tort was committed. If the injury occurs in another State than the State, in which the act that caused injury arose, the law of that State shall be applicable if the tortfeasor should have foreseen that the injury would occur there.

<sup>3</sup> Notwithstanding the preceding paragraphs, if a tort violates an existing legal relationship between the tortfeasor and the injured party, claims founded in tort shall be governed by the law applicable to that legal relationship.

**Art. 134**

## 2. In particular

## a. Traffic accidents

Claims resulting from traffic accidents shall be governed by The Hague Convention of May 4, 1971 on the Law Applicable to Traffic Accidents.

**Art. 135**

## b. Product liability

<sup>1</sup> Claims founded on a product defect or a faulty description of a product shall be governed at the option of the injured party by:



- a. The law of the State in which the tortfeasor has his place of business or, in the absence of a place of business, his place of habitual residence; or
- b. The law of the State in which the product was purchased unless the tortfeasor proves that the product was marketed in that State without his consent.

<sup>2</sup> If claims founded on a product defect or a faulty description of a product are governed by foreign law, no awards may be made in Switzerland in excess of those which would have been awarded for such damage under Swiss law.

### **Art. 136**

- c. Unfair competition

<sup>1</sup> Claims founded on an act of unfair competition shall be governed by the law of the State in whose market the effects occur.

<sup>2</sup> If the act affects exclusively the business of a particular competitor, the applicable law shall be that of the State where the place of business of the injured party is located.

<sup>3</sup> Article 133, paragraph 3, takes precedence.

### **Art. 137**

- d. Restraint of competition

<sup>1</sup> Claims founded on restraint of competition shall be governed by the law of the State in whose market the direct effects of the restraint on the injured party occur.

<sup>2</sup> If claims founded on restraint of competition are governed by foreign law, no awards may be made in Switzerland in excess of those which would have been awarded for a restraint of competition under Swiss law.

### **Art. 138**

- e. Nuisances

Claims arising from nuisances emanating from real property shall be governed at the option of the injured party by the law of the State in which the real property is located or by the law of the State in which the effects of the nuisances occur.

**Art. 139**

## f. Infringement of personality rights

<sup>1</sup> Claims founded on an infringement of personality rights by the media, especially by the press, radio, television, or other means of public information, shall be governed at the option of the injured party by:

- a. The law of the State in which the injured party has his place of habitual residence if the tortfeasor should have foreseen that the effects would occur in that State;
- b. The law of the State in which the tortfeasor has his place of business or place of habitual residence; or
- c. The law of the State in which the effects of the infringement have occurred if the tortfeasor should have foreseen that the effects would occur in that State.

<sup>2</sup> The right to reply against the media shall be governed exclusively by the law of the State in which the publication appeared or from which the radio or television program was broadcasted.

<sup>3</sup> Paragraph 1 shall also apply to claims founded on an infringement of personality rights through the processing of personal data and claims founded on an impairment of the right to information concerning personal data.

**Art. 140**

## 3. Special provisions

- a. Several tortfeasors

If several parties participated in a tort, the applicable law shall be determined separately for each of them, whatever their role therein.

**Art. 141**

- b. Direct action against insurer

The injured party may bring his claim directly against the insurer of the liable party if the law applicable to the tort or the insurance contract so provides.

**Art. 142**

## 4. Scope of application

<sup>1</sup> The law applicable to the tort shall determine in particular tortious capacity, the conditions and extent of liability, as well as the party liable.

<sup>2</sup> Regulations governing safety and conduct in force at the place of the act shall be taken into consideration.

**Section 4: Provisions in Common****Art. 143**

## I. Multiple debtors

## 1. Claims against several debtors

If the creditor has a claim against several debtors, the legal consequences thereof shall be determined under the law which governs the legal relationship between the creditor and the debtor sued.

**Art. 144**

## 2. Recourse between debtors

<sup>1</sup> A debtor has a right of recourse against a co-debtor, directly or by subrogation, only to the extent permitted under the laws governing their debts to the creditor.

<sup>2</sup> The exercise of the right of recourse against a co-debtor shall be governed by the law applicable to the debt between that debtor and the creditor. Questions exclusively concerning the relationship between the creditor and the claimant debtor shall be governed by the law applicable to the debt between them.

<sup>3</sup> The right of an institution performing public duties to seek recourse shall be determined by the law applicable to that institution. For the admissibility and exercise of the right of recourse, paragraphs 1 and 2 are applicable.

**Art. 145**

## II. Transfer of a claim

## 1. Assignment by contract

<sup>1</sup> The contractual assignment of a claim shall be governed by the law chosen by the parties or, in the absence of such choice, by the law applicable to the claim. The choice of law made by the assignor and assignee shall not be applied against the debtor without his consent.

<sup>2</sup> The choice of law concerning the assignment of a claim of an employee shall only be valid to the extent permitted under Article 121, paragraph 3, concerning an employment contract.

<sup>3</sup> The form of assignment shall be governed exclusively by the law applicable to the contract of assignment.

<sup>4</sup> Questions exclusively concerning the relationship between assignor and assignee shall be governed by the law applicable to the legal relationship on which the assignment is based.

**Art. 146**

## 2. Transfer by operation of law

<sup>1</sup> The transfer of a claim by operation shall be governed by the law which governs the underlying legal relationship between the former and the new creditor or, in the absence of such relationship, by the law which governs the claim.

<sup>2</sup> The provisions of the law governing the claim which are intended to protect the debtor take precedence.

**Art. 147**

## III. Currency

<sup>1</sup> Currency is defined by the law of the State issuing the currency.

<sup>2</sup> The effects that currency exerts on the amount of a debt shall be governed by the law applicable to the debt.

<sup>3</sup> The law of the State in which payment must be made shall determine in which currency the payment is to be made.

**Art. 148**

## IV. Statute of limitations and extinction of a claim

<sup>1</sup> The law applicable to a claim shall govern the statute of limitations applicable to it and its extinction.

<sup>2</sup> In the case of extinction by set-off, the law applicable is that which governs the claim to which the set-off is made.

<sup>3</sup> Novation, release, and contracts of set-off shall be governed by the provisions of this Code concerning the law applicable to contracts (Art. 116 et seq.).

**Section 5: Foreign Decisions****Art. 149**

<sup>1</sup> Foreign decisions relating to claims concerning the law of obligations shall be recognized in Switzerland:

- a. If they were rendered in the State of domicile of the defendant; or
- b. If they were rendered in the State of habitual residence of the defendant and the claims relate to an activity conducted there.

<sup>2</sup> A foreign decision shall also be recognized:

- a. If a decision relating to a contractual obligation was rendered in the State of performance of the characteristic obligation and the defendant was not domiciled in Switzerland;
- b. If a decision relating to a claim concerning a consumer contract was rendered at the domicile or place of habitual residence of the consumer and the conditions set forth in Art. 120, paragraph 1, are satisfied;
- c. If a decision relating to a claim concerning an employment contract was rendered at the place where the employee worked or at the place where the business was conducted and the employee was not domiciled in Switzerland;
- d. If a decision relating to a claim resulting from the operation of a business was rendered at the registered office of that business;
- e. If a decision relating to unjust enrichment was rendered at the place of the act or the resultant injury and the defendant was not domiciled in Switzerland; or

- f. If a decision relating to a tort was rendered at the place of the act or the resultant injury and the defendant was not domiciled in Switzerland.

## **Chapter 9a: Trusts**

### **Art. 149a**

#### I. Notions

The term “trust” refers to trusts that are created by means of legal relationships within the meaning of the Hague Convention of July 1, 1985, on the Law Applicable to Trusts and on Their Recognition, regardless of whether they are evidenced by a writing within the meaning of Article 3 of the Convention.

### **Art. 149b**

#### II. Jurisdiction

<sup>1</sup> In matters concerning trust law, the choice of jurisdiction under the terms of the trust shall be determinative. The choice, or an authorization for these purposes, in the terms must be observed only if it is in writing or in other form which enables proof by text. Unless otherwise provided, the designated court shall have exclusive jurisdiction. Article 5, paragraph 2, is applicable by analogy.

<sup>2</sup> The designated court may not decline its jurisdiction if:

- a. A party, the trust or a trustee has their domicile, place of habitual residence or a place of business in the canton of this court, or
- b. A major portion of the trust assets is located in Switzerland.

<sup>3</sup> If there is no valid choice of jurisdiction or if the court thereby designated does not have exclusive jurisdiction, the Swiss courts shall have jurisdiction:

- a. At the domicile or, in the absence of domicile, the place of habitual residence of the defendant;
- b. At the registered office of the trust, or
- c. For actions based on the activities of a place of business in Switzerland, at the location of this place of business.

<sup>4</sup> In the case of disputes concerning responsibility based on the public issuance of equity and debt instruments, the action may also be brought before the Swiss courts at the place of issuance. This jurisdiction cannot be precluded by a choice of jurisdiction.

### **Art. 149c**

#### III. Applicable law

<sup>1</sup> With respect to the law applicable to trusts, the Hague Convention of July 1, 1985, on the Law Applicable to Trusts and on Their Recognition is applicable.

<sup>2</sup> The law designated as applicable under the Convention also applies if, under Article 5 of the Convention, such law is not to be applied or if, under Article 13 of the Convention, no obligation to recognize a trust exists.

### **Art. 149d**

#### IV. Special rules concerning publicity

<sup>1</sup> In the case of trust assets that are entered in the name of trustees in the Real Estate Register, the Ships Register or the Aircraft Register, reference may be made to the trust relationship by means of an annotation.

<sup>2</sup> Trust relationships that affect intellectual property rights registered in Switzerland shall be entered in the relevant register upon request.

<sup>3</sup> A trust relationship that is not noted or entered shall be invalid against bona fide third parties.

### **Art. 149e**

#### V. Foreign decisions

<sup>1</sup> Foreign decisions in matters concerning trust law shall be recognized in Switzerland if:

- a. They have been issued by a validly designated court under Article 149b, paragraph 1;
- b. They were issued in the State in which the defendant has his domicile, place of habitual residence or place of business;
- c. They were issued in the State in which the trust has its registered office;
- d. They were issued in the State whose law governs the trust, or

- e. They are recognized in the State in which the trust has its registered office, and the defendant did not have his domicile in Switzerland.

<sup>2</sup> With respect to foreign decisions concerning claims relating to the public issuance of equity and debt instruments by means of a prospectus, circular or similar publications, Article 165, paragraph 2, is applicable by analogy.

## **Chapter 10: Company Law**

### **Art. 150**

#### I. Notions

<sup>1</sup> For purposes of this Code, the term company shall include all organized associations of persons and all organized units of assets.

<sup>2</sup> Simple partnerships which have not been organized shall be governed by the provisions of this Code concerning contracts (Art. 116 et seq.).

### **Art. 151**

#### II. Jurisdiction

##### 1. General rule

<sup>1</sup> In disputes concerning company law, the Swiss courts at the registered office of the company shall have jurisdiction over actions against the company, the stockholders or partners, or the persons liable under company law.

<sup>2</sup> The Swiss courts at the domicile or, in the absence of domicile, at the place of habitual residence of the defendant shall also have jurisdiction over actions against a stockholder or a partner or a person liable under company law.

<sup>3</sup> In addition, the Swiss courts at the place of public issuance of equity and debt instruments shall have jurisdiction over an action in responsibility related to the issuance. This jurisdiction cannot be precluded by an agreement on venue.

<sup>4</sup> Repealed.



**Art. 152**

## 2. Liability for foreign companies

The following courts shall have jurisdiction over actions brought against a person liable under Article 159 or against the foreign company for which the person acts:

- a. The Swiss courts at the domicile or, in the absence of domicile, the place of habitual residence of the defendant; or
- b. The Swiss courts at the place where the company is administered in fact.

**Art. 153**

## 3. Protective measures

Measures intended to protect property located in Switzerland of companies which have their registered office abroad shall be under the jurisdiction of the Swiss judicial or administrative authorities at the place where the property to be protected is located.

**Art. 154**

## III. Applicable law

## 1. General rule

<sup>1</sup> Companies shall be governed by the law of the State under which they are organized if they satisfy the publication or registration requirements of that law or, if there are no such requirements, if they are organized according to the law of that State.

<sup>2</sup> A company which fails to meet these conditions shall be governed by the law of the State in which it is administered in fact.

**Art. 155**

## 2. Scope

Except as set forth in Articles 156 to 161, the law applicable to the company shall govern in particular:

- a. The legal nature of the company;
- b. The formation and dissolution;

- c. The legal capacity and the capacity to act;
- d. The name or the style;
- e. The organization;
- f. The internal relationships, in particular the relationship between the company and its members;
- g. The liability arising from the violation of company law;
- h. The liability for the debts of the company;
- i. The power to represent the company by the persons acting for it pursuant to its organization.

#### **Art. 156**

##### IV. Special rules

##### 1. Claims arising from the public issuance of equity and debt instruments

Claims arising from the public issuance of equity and debt instruments by means of a prospectus, circular, or similar publications shall be governed by the law applicable to the company or that of the State in which the issuance is made.

#### **Art. 157**

##### 2. Protection of the name and the style

<sup>1</sup> The protection against infringement in Switzerland of the name or the style of a company registered in the Swiss Register of Commerce shall be governed by Swiss law.

<sup>2</sup> In the absence of registration in the Swiss Register of Commerce, the protection of the name or the style shall be governed by the law applicable to unfair competition (Art. 136) or to infringement of personality rights (Art. 132, 133 and 139).

#### **Art. 158**

##### 3. Restriction on the power to represent a company

A company may not invoke restrictions on the representative power of a director, officer, or agent which are unknown under the law of the place of business or habitual residence of the other party unless the other party knew or should have known of the restrictions.

**Art. 159**

## 4. Liability for foreign companies

If the business of a company formed under foreign law is conducted in or from Switzerland, the liability of the persons acting on behalf of the company shall be governed by Swiss law.

**Art. 160**

## V. Swiss branch of foreign companies

<sup>1</sup> A company which has its registered office abroad may have a branch in Switzerland. The branch shall be governed by Swiss law.

<sup>2</sup> Swiss law shall govern the power to represent such branch. At least one person authorized to represent the branch must be domiciled in Switzerland and be registered in the Register of Commerce.

<sup>3</sup> The Federal Council shall fix the requirements of the mandatory registration in the Register of Commerce.

**Art. 161**

## VI. Transfer, merger, demerger an transfer of assets

## 1. Transfer of a foreign company to Switzerland

## a. General rule

<sup>1</sup> A foreign company may, without liquidating and reincorporating, submit itself to Swiss law if the governing foreign law so permits. The company must satisfy the requirements fixed by the foreign law and must be able to adopt one of the forms of organization of Swiss law.

<sup>2</sup> The Federal Council may authorize the submission to Swiss law even if the requirements fixed by the foreign law are not met, particularly if important Swiss interests are involved.

**Art. 162**

## b. Determinative point in time

<sup>1</sup> A company which, pursuant to Swiss law, is required to be registered in the Register of Commerce shall be governed by Swiss law as soon as it proves that its center of business activities has been transferred to Switzerland and that it has adopted one of the forms of organization under Swiss law.

<sup>2</sup> A company which, pursuant to Swiss law, is not required to be registered in the Register of Commerce shall be governed by Swiss law as soon as it has clearly chosen to be governed by Swiss law, has a sufficient relationship with Switzerland, and adopts one of the forms of organization under Swiss law.

<sup>3</sup> Before it may be registered, a joint stock company must prove that its share capital is unimpaired according to Swiss law by means of the report of a licensed expert auditor within the meaning of the Act on the Oversight of Auditors of December 16, 2005.

### **Art. 163**

2. Transfer of a company from Switzerland to a foreign country

<sup>1</sup> A Swiss company may, without liquidating and reincorporating, submit itself to a foreign law if the conditions fixed by Swiss law are satisfied and it continues to exist under foreign law.

<sup>2</sup> The creditors must be requested, in a public notice announcing the proposed change in the company's State of incorporation, to submit their claims. Article 46 of the Merger Act of October 3, 2003 shall apply by analogy.

<sup>3</sup> The provisions concerning protective measures in the event of international conflicts within the meaning of Article 61 of the Federal Statute on National Economic Supply of October 8, 1982 take precedence.

### **Art. 163a**

3. Merger

a. Merger from a foreign country to Switzerland

<sup>1</sup> A Swiss company may acquire a foreign company (absorption by immigration) or combine with a foreign company to form a new Swiss company (combination by immigration) if the law applicable to the foreign company so permits and the conditions fixed by such law are satisfied.

<sup>2</sup> Except as herein provided, the merger shall be governed by Swiss law.

### **Art. 163b**

b. Merger from Switzerland to a foreign country

<sup>1</sup> A foreign company may acquire a Swiss company (absorption by emigration) or combine with a Swiss company to form a new foreign company (combination by emigration) if the Swiss company proves that:

- a. its assets and liabilities will pass to the foreign company upon the merger; and;
- b. the equity or membership rights will continue to be appropriately safeguarded in the foreign company.

<sup>2</sup> The Swiss company must fulfill all provisions of Swiss law that apply with respect to the transferring company.

<sup>3</sup> The creditors must be requested, in a public notice announcing the proposed merger in Switzerland, to submit their claims. Article 46 of the Merger Act of October 3, 2003 shall apply by analogy.

<sup>4</sup> Except as herein provided, the merger shall be governed by the law of the surviving foreign company.

#### **Art. 163c**

##### c. Merger agreement

<sup>1</sup> The merger agreement must comply with the mandatory provisions of the company laws applicable to the companies involved, including the requirements as to form.

<sup>2</sup> Except as herein provided, the merger agreement shall be governed by the law chosen by the parties. In the absence of a choice of law, the merger agreement shall be governed by the law of the State with which the agreement is most closely connected. It shall be presumed that the closest connection exists with the State whose laws will govern the surviving company.

#### **Art. 163d**

##### 4. Demerger and transfer of assets

<sup>1</sup> The provisions of this Code concerning the merger shall apply by analogy to any demerger and any transfer of assets involving a Swiss company and a foreign company. Article 163b, paragraph 3, shall not apply to the transfer of assets.

<sup>2</sup> Except as herein provided, the demerger and the transfer of assets shall be governed by the law of the demerging company or the company transferring its assets to another legal entity.

<sup>3</sup> Subject to the conditions under Article 163c, paragraph 2, the law applicable to the demerging company shall be presumed to govern the demerger agreement. The same shall apply by analogy to the agreement for the transfer of assets.

**Art. 164**

## 5. Provisions in common

## a. Deletion from the Register of Commerce

<sup>1</sup> A company registered in the Swiss Register of Commerce may be deleted only if it is confirmed by means of the report of a licensed expert auditor that the claims of the creditors within the meaning of Article 46 of the Merger Act of October 3, 2003, are secured or have been satisfied or that the creditors consent to the deletion.

<sup>2</sup> If a foreign company acquires a Swiss company or the companies combine to form a new foreign company, or if a Swiss company demerges into foreign companies, it must, in addition:

- a. be proven that the merger or the demerger has become legally effective under the law applicable to the foreign company; and
- b. a licensed audit expert must confirm that the foreign company has granted equity or membership rights to the partners or shareholders of the Swiss company entitled to claim such rights or that a compensatory payment or settlement, if any, has been paid or secured.

**Art. 164a**

## b. Place of debt collection and jurisdiction

<sup>1</sup> If a foreign company acquires a Swiss company or the companies combine to form a new foreign company, or if a Swiss company demerges into foreign companies, an action for a review of the equity or membership rights in accordance with Article 105 of the Merger Act of October 3, 2003, may also be lodged at the Swiss registered office of the transferring legal entity.

<sup>2</sup> The place of debt collection and the place of jurisdiction in Switzerland hitherto applicable shall continue to apply until the claims of the creditors or shareholders have been secured or satisfied.

**Art. 164b**

## c. Transfer, merger, demerger and transfer of assets in foreign countries

The subjection of a foreign company to a different foreign law and the merger, demerger and transfer of assets between foreign companies shall be recognized as valid in Switzerland if the same is valid under the laws involved.

**Art. 165**

## VIII. Foreign decisions

<sup>1</sup> Foreign decisions concerning claims under company law shall be recognized in Switzerland:

- a. If they rendered or are recognized in the State in which the company has its registered office and the defendant was not domiciled in Switzerland; or
- b. If they were rendered in the State of domicile or at the place of habitual residence of the defendant.

<sup>2</sup> Foreign decisions concerning claims relating to the public issuance of equity and debt instruments by means of prospectus, circular, or similar publications shall be recognized in Switzerland if they were rendered in the State in which the issuance of the equity or debt instruments was made and the defendant was not domiciled in Switzerland.

**Chapter 11: Bankruptcy and Composition Agreements****Art. 166**

## I. Recognition

<sup>1</sup> A foreign bankruptcy decree entered in the State of domicile of the debtor shall be recognized in Switzerland upon application of the foreign trustee in bankruptcy or one of the creditors:

- a. If the decree is enforceable in the State where it was entered;
- b. If there are no grounds for refusal under Article 27 of this Code; and
- c. If reciprocity is accorded in the State where the decree was entered.

<sup>2</sup> If the debtor has a branch in Switzerland, the procedure provided for under Article 50, paragraph 1, of the Federal Statute on the Prosecution for Debts and Bankruptcy is permissible until the schedule of creditors under Article 172 of this Code becomes final.

**Art. 167**

## II. Procedure

## 1. Jurisdiction

<sup>1</sup> An application for recognition of a foreign bankruptcy decree must be filed with the court at the place where the assets are located in Switzerland. Article 29 is applicable by analogy.

<sup>2</sup> If there are assets in several places, the court in which an application was first filed shall have exclusive jurisdiction.

<sup>3</sup> Claims of the bankrupt shall be deemed to be located at the domicile of the debtor of the bankrupt.

### **Art. 168**

#### 2. Protective measures

Upon filing of an application for the recognition of a bankruptcy decree entered abroad, the court may, at the request of the applicant, order protective measures under Articles 162 to 165 and 170 of the Federal Statute on the Prosecution for Debts and Bankruptcy.

### **Art. 169**

#### 3. Publication

<sup>1</sup> The decision recognizing the foreign bankruptcy decree shall be published.

<sup>2</sup> The decision shall be communicated to the office for the Prosecution for Debts, the Bankruptcy Office, the Registry of Real Estate, and the Registry of Commerce at the place where the assets are located and, if necessary, to the Federal Office of Intellectual Property. The same applies to the conclusion and the suspension of a bankruptcy proceeding and to the revocation of a bankruptcy decree.

### **Art. 170**

#### III. Legal consequences

##### 1. In general

<sup>1</sup> With respect to the assets of the debtor located in Switzerland, the recognition of a foreign bankruptcy decree shall have the effects of bankruptcy as set forth under Swiss law unless otherwise provided in this Code.

<sup>2</sup> The time limits fixed by Swiss law shall commence to run with the publication of the decision of recognition.

<sup>3</sup> A creditors meeting shall not be held nor shall a creditors' committee be formed.



**Art. 171**

## 2. Action in rescission

An action in rescission shall be governed by Articles 285 to 292 of the Federal Statute on the Prosecution for Debts and Bankruptcy. It may be also brought by the foreign trustee in bankruptcy or by one of the creditors who has the right to do so.

**Art. 172**

## 3. Schedule of creditors

<sup>1</sup> Only the following shall be included in the schedule of creditors:

- a. The claims secured by way of pledge pursuant to Article 219 of the Federal Statute on the Prosecution for Debts and Bankruptcy, and
- b. The unsecured but privileged claims of Swiss-domiciled creditors.

<sup>2</sup> Only those creditors set forth in paragraph 1 may bring an action to contest the schedule of creditors provided for under Article 250 of the Federal Statute on the Prosecution for Debts and Bankruptcy.

<sup>3</sup> If a creditor has been partially paid in a foreign proceeding associated with the bankruptcy, the amount that he received shall be imputed, after deduction of the costs incurred, as a payment received in the Swiss proceeding.

**Art. 173**

## 4. Distribution

- a. Recognition of the foreign schedule of creditors

<sup>1</sup> After distribution to all creditors as set forth under Article 172, paragraph 1, the remaining balance shall be remitted to the foreign trustee in bankruptcy or to those creditors who are entitled thereto under the foreign law.

<sup>2</sup> The surplus may not be made available until the foreign schedule of creditors has been recognized.

<sup>3</sup> The Swiss court with jurisdiction to recognize the foreign bankruptcy decree shall also have jurisdiction to recognize the foreign schedule of creditors. In particular, it shall examine whether the creditors domiciled in Switzerland have been equitably included in the foreign schedule of creditors. The creditors concerned shall be granted a hearing.

**Art. 174**

b. Non-recognition of the foreign schedule of creditors

<sup>1</sup> If the foreign schedule of creditors cannot be recognized, any surplus shall be distributed among the Swiss-domiciled creditors of the third class as set forth in Article 219, paragraph 4, of the Federal Statute on the Prosecution for Debts and Bankruptcy.

<sup>2</sup> The same shall apply if the schedule of creditors is not filed for recognition within the time period fixed by the judge.

**Art. 175**

IV. Recognition of foreign composition and similar proceedings

A composition or a similar proceeding in a foreign jurisdiction shall be recognized in Switzerland. Articles 166 to 170 shall be applicable by analogy. The creditors domiciled in Switzerland shall be granted a hearing.

**Chapter 12: International Arbitration****Art. 176**

I. Scope of application; seat of the arbitral tribunal

<sup>1</sup> The provisions of this chapter shall apply to arbitrations if the seat of the arbitral tribunal is in Switzerland and if at least one of the parties at the time the arbitration agreement was concluded was neither domiciled nor habitually resident in Switzerland.

<sup>2</sup> The provisions of this chapter shall not apply if the parties exclude its application explicitly in the arbitration agreement or in a later agreement and agree to the application of the third part of the Swiss Code of Civil Procedure.

<sup>3</sup> The arbitrators shall determine the seat of the arbitral tribunal if the parties or the arbitration institution designated by them fail to do so.

**Art. 177**

II. Arbitrability

<sup>1</sup> All pecuniary claims may be submitted to arbitration.

<sup>2</sup> If one party to an arbitration agreement is a State or an enterprise dominated by or an organization controlled by a State, it may not invoke its own law to contest the arbitrability of a dispute or its capacity to be subject to an arbitration.

### **Art. 178**

#### III. Arbitration agreement

<sup>1</sup> As to form, the arbitration agreement shall be valid if it is made in writing, by telegram, telex, telecopier, or any other means of communication that establishes the terms of the agreement by a text.

<sup>2</sup> As to substance, the arbitration agreement shall be valid if it complies with the requirements of the law chosen by the parties or the law governing the object of the dispute and, in particular, the law applicable to the principal contract, or with Swiss law.

<sup>3</sup> The validity of an arbitration agreement may not be contested on the grounds that the principal contract is invalid or that the arbitration agreement concerns a dispute which has not yet arisen.

### **Art. 179**

#### IV. Arbitral tribunal

##### 1. Appointment

<sup>1</sup> The arbitrators shall be appointed, removed, or replaced in accordance with the agreement of the parties.

<sup>2</sup> In the absence of such agreement, the judge at the seat of the arbitral tribunal may be called upon; he shall apply the provisions of the Swiss Code of Civil Procedure concerning the appointment, removal or replacement of arbitrators by analogy.

<sup>3</sup> If a judge is called upon to appoint an arbitrator, he must comply with this request unless a summary examination demonstrates that no arbitration agreement exists between the parties.

### **Art. 180**

##### 2. Challenge of arbitrators

<sup>1</sup> An arbitrator must be challenged:

- a. If he does not possess the qualification agreed upon by the parties;

- b. If there exist grounds for challenge in the rules of arbitration adopted by the parties; or
- c. If the circumstances permit legitimate doubt about his independence.

<sup>2</sup> A party may challenge an arbitrator whom he nominated or in whose appointment he participated only on information discovered after the appointment. The arbitral tribunal and the other party must be informed immediately of the grounds for the challenge.

<sup>3</sup> In the event of a dispute and if the parties have not agreed upon the procedures for challenge, the judge at the seat of the arbitral tribunal shall make final decision.

### **Art. 181**

#### V. Lis pendens

The arbitration proceeding shall be pending from the moment one of the parties files a claim before the sole arbitrator of the arbitrators designated in the arbitration agreement or, in the absence of such designation, if one of the parties institutes the procedure for the appointment of the arbitral tribunal.

### **Art. 182**

#### V. Procedure

##### 1. General rule

<sup>1</sup> The parties may directly or by reference to rules of arbitration regulate the arbitral procedure; they may also subject the procedure to the procedural law of their choice.

<sup>2</sup> If the parties have not regulated the procedure, it shall be fixed, as necessary, by the arbitral tribunal either directly or by reference to a law or rules of arbitration.

<sup>3</sup> Irrespective of the procedure chosen, the arbitral tribunal shall accord equal treatment to the parties and their right to be heard in an adversarial proceeding.

### **Art. 183**

#### 2. Provisional and protective measures

<sup>1</sup> Unless the parties have agreed otherwise, the arbitral tribunal may enter provisional or protective measures at the request of one party.

<sup>2</sup> If the party concerned does not comply voluntarily, the arbitral tribunal may request the assistance of the judge with jurisdiction who shall apply his own law.

<sup>3</sup> The arbitral tribunal or the judge may make the entry of provisional or protective measures subject to the receipt of appropriate security.

#### **Art. 184**

##### 3. Taking of evidence

<sup>1</sup> The arbitral tribunal shall take evidence.

<sup>2</sup> If the assistance of the judicial or administrative authorities of the State is needed to take evidence, the arbitral tribunal or, with the consent of the arbitral tribunal, a party may request the assistance of the judge at the seat of the arbitral tribunal who shall apply his own law.

#### **Art. 185**

##### 4. Further assistance by the judge

If further assistance of the judicial or administrative authorities is required, the judge at the seat of the arbitral tribunal shall have jurisdiction.

#### **Art. 186**

##### VII. Jurisdiction

<sup>1</sup> The arbitral tribunal shall rule on its own jurisdiction.

<sup>1bis</sup> It shall rule on its jurisdiction irrespective of any legal action already pending before a State court or another arbitral tribunal relating to the same object between the same parties, unless noteworthy grounds require a suspension of the proceedings.

<sup>2</sup> The objection of lack of jurisdiction must be raised prior to any defense on the merits.

<sup>3</sup> In general, the arbitral tribunal shall rule on its own jurisdiction by means of an interlocutory decision.

#### **Art. 187**

##### VIII. Decision on the merits

##### 1. Applicable law

<sup>1</sup> The arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected.

<sup>2</sup>The parties may authorize the arbitral tribunal to rule according to equity.

### **Art. 188**

#### 2. Partial award

Unless the parties have agreed otherwise, the arbitral tribunal may render partial awards.

### **Art. 189**

#### 3. Arbitral award

<sup>1</sup> The arbitral award shall be rendered according to the procedure and in the form agreed upon by the parties.

<sup>2</sup> In the absence of such agreement, the award shall be rendered by a majority or, in the absence of such majority, by the chairman alone. The award must be in writing, set forth the reasons on which it is based, and be dated and signed. The signature of the chairman is sufficient.

### **Art. 190**

#### IX. Finality, appeal

##### 1. General rule

<sup>1</sup> The award shall be final when communicated.

<sup>2</sup> It can be challenged only:

- a. If a sole arbitrator was designated irregularly or the arbitral tribunal was constituted irregularly;
- b. If the arbitral tribunal erroneously held that it had or did not have jurisdiction;
- c. If the arbitral tribunal ruled on matters beyond the claims submitted to it or if it failed to rule on one of the claims;
- d. If the equality of the parties or their right to be heard in an adversarial proceeding was not respected;
- e. If the award is incompatible with Swiss public policy (*ordre public*).

<sup>3</sup> An interlocutory award may only be challenged on the grounds stated in paragraph 2, letters a and b; the time limit for lodging an appeal shall commence when the interlocutory award is communicated.

### **Art. 191**

#### 2. Court of appeal

An appeal may be taken only to the Swiss Federal Supreme Court. The procedure shall be subject to Article 77 of the Law on the Federal Supreme Court of June 17, 2005.

### **Art. 192**

#### X. Waiver of appeal

<sup>1</sup> If neither party has a domicile, a place of habitual residence, or a place of business in Switzerland, they may, by an express declaration in the arbitration agreement or in a subsequent written agreement, exclude all appeals against the award of the arbitral tribunal. They may also exclude an appeal only on one or several of the grounds enumerated in Article 190, paragraph 2.

<sup>2</sup> If the parties have excluded all appeals against the award and enforcement of the awards is sought in Switzerland, the New York Convention of June 10, 1958 on the Recognition and Enforcement of Foreign Arbitral Awards shall apply by analogy.

### **Art. 193**

#### XI. Deposit and certificate of enforceability

<sup>1</sup> Each party may deposit at its own expense a copy of the award with the Swiss court at the seat of the arbitral tribunal.

<sup>2</sup> The Swiss court shall certify at the request of a party that the award is enforceable.

<sup>3</sup> At the request of a party, the arbitral tribunal shall certify that the award was rendered in conformity with the provisions of this Code; such a certificate is equivalent to a deposit with the Court.

### **Art. 194**

#### XII. Foreign arbitral awards

The recognition and enforcement of foreign arbitral awards shall be governed by the New York Convention of June 10, 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

## Chapter 13: Final Provisions

### Section 1: Repeal and Amendment of Federal Law Currently in Force

#### Art. 195

The repeal and amendment of federal law currently in force are set forth in the annex; the annex forms an integral part of this Code.

### Section 2: Transitional Provisions

#### Art. 196

##### I. Non-retroactive

<sup>1</sup> Facts or legal transactions that occurred and produced all their effects before the effective date of this Code shall be governed by the former law.

<sup>2</sup> Facts or legal transactions that occurred before the effective date of this Code, but which continue to produce legal effects, shall be subject to the former law for the period prior to the effective date. Upon the effective date of this Code, their effects for the subsequent period shall be governed by the new law.

#### Art. 197

##### II. Transitory law

##### 1. Jurisdiction

<sup>1</sup> The Swiss judicial or administrative authorities before which actions or petitions were brought prior to the effective date of this Code shall continue to have jurisdiction even if their jurisdiction is no longer established under this Code.

<sup>2</sup> Actions or petitions dismissed by Swiss judicial or administrative authorities for lack of jurisdiction prior to the effective date of this Code may be refiled after the effective date if jurisdiction of a Swiss authority is established by this Code and the legal claim can still be brought.



**Art. 198**

## 2. Applicable law

This Code shall determine the law applicable to actions or petitions which are pending before the judicial or administrative authorities of the first instance on the effective date of this Code.

**Art. 199**

## 3. Recognition and enforcement of foreign decisions

Petitions for the recognition or enforcement of foreign decisions which are pending on the effective date of this Code shall be governed by the provisions of this Code concerning the conditions for the recognition and enforcement of foreign decisions.

**Section 3: Referendum and Effective Date****Art. 200**

<sup>1</sup> This Code is subject to an optional referendum.

<sup>2</sup> The Federal Council shall fix the effective date of this Code.