

# Federal Act on Private International Law

of 18 December 1987  
in effect as from 1<sup>st</sup> January 2019

*The English translations of the provisions of the PIL Act stated below are reproduced in:  
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edited by Andreas Bucher with Helbing&Lichtenhahn, Basle,  
and commented together with Andrea Bonomi, Andrea Braconi, Philippe Ducor, Louis Gaillard,  
Florence Guillaume and Pierre-Yves Tschanz.  
All more recent amendments have been added.*

## Chapter 1: General Provisions

### Section 1: Scope of application

#### Article 1

<sup>1</sup> This Act governs, in international matters:

- a. the jurisdiction of Swiss judicial or administrative authorities;
- b. applicable law;
- c. the prerequisites for the recognition and enforcement of foreign decisions;
- d. bankruptcy and composition;
- e. arbitration.

<sup>2</sup> This Act does not affect international treaties.

### Section 2: Jurisdiction

#### Article 2

I. In general      The Swiss judicial or administrative authorities at the defendant's domicile have jurisdiction unless specific provisions of this Act provide otherwise.

#### Article 3

II. Jurisdiction by necessity      When this Act does not provide for jurisdiction in Switzerland and proceedings in a foreign country are impossible or cannot reasonably be required, the Swiss judicial or administrative authorities at the place with which the case has a sufficient connection have jurisdiction.

#### Article 4

III. Perfecting attachments      When this Act does not provide for any other forum in Switzerland, the action to perfect an attachment may be brought at the Swiss forum of the attachment.

#### Article 5

IV. Choice of forum      <sup>1</sup> In matters involving an economic interest, parties may agree on the court that will have to decide any potential or existing dispute arising out of a specific legal

relationship. The agreement may be entered into in writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text. Unless otherwise agreed, a choice of forum is exclusive.

<sup>2</sup> A choice of forum has no effect if it results in abusively depriving a party from the protection granted to it by a forum provided by Swiss law.

<sup>3</sup> The chosen court may not deny jurisdiction:

- a. if a party is domiciled or has its habitual residence or a place of business in the canton where the chosen court sits; or
- b. if, pursuant to this Act, Swiss law is applicable to the dispute.

### **Article 6**

V. Implied consent

In matters involving an economic interest, a court shall have jurisdiction if the defendant proceeds on the merits without reservation, unless such court denies jurisdiction to the extent permitted by Article 5, paragraph 3.

### **Article 7**

VI. Arbitration agreement

If the parties have entered into an arbitration agreement with respect to an arbitrable dispute, any Swiss court before which such dispute is brought shall deny jurisdiction, unless:

- a. the defendant has proceeded on the merits without reservation;
- 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 appointed for reasons that are obviously attributable to the defendant in the arbitration.

### **Article 8**

VII. Counterclaim

The court before which the main claim is brought shall also entertain any counterclaim, provided there is a nexus between the claim and counterclaim.

### **Article 8a**

VIII. Codefendants and plurality of actions

<sup>1</sup> When the action is brought against several codefendants who can be sued in Switzerland pursuant to the present Act, the Swiss court having jurisdiction over one defendant shall have jurisdiction over all of them.

<sup>2</sup> When several claims having a nexus between them can be raised in Switzerland pursuant to the present Act against the same defendant, any Swiss court having jurisdiction over one of such claims shall have jurisdiction over all of them.

### **Article 8b**

IX. Third party action

A Swiss court having jurisdiction for the main action also has jurisdiction for a third party action provided a Swiss court has jurisdiction over such third party pursuant to the present Act.

### **Article 8c**

X. Civil claims

Where it is admissible to pursue civil claims in criminal proceedings, the Swiss court which is seized of the criminal proceedings also has jurisdiction for the civil claims provided that a Swiss court has jurisdiction for such claims under the present Act.

### Article 9

- XI. Lis pendens
- <sup>1</sup> When an action having the same subject matter is already pending between the same parties in a foreign country, the Swiss court shall stay the case if it is to be expected that the foreign court will, within a reasonable time, render a decision capable of being recognized in Switzerland.
- <sup>2</sup> In order to determine when an action has been initiated in Switzerland, the conclusive date is that of the first act that is necessary to initiate the proceeding. A notice to appear for conciliation is sufficient.
- <sup>3</sup> The Swiss court shall terminate its proceeding as soon as it is presented with a foreign decision capable of being recognized in Switzerland.

### Article 10

- XII. Interim relief
- Jurisdiction to order interim relief lies:
- a. with either the Swiss courts or authorities having jurisdiction for the principal action; or
  - b. with the Swiss courts or authorities at the place where the interim measures are to be enforced.

### Article 11

- XIII. Judicial assistance  
1. Transmission
- Requests for judicial assistance to or from Switzerland are transmitted by the Federal Office of Justice.

#### Article 11a

2. Applicable law
- <sup>1</sup> Acts of judicial assistance are carried out in Switzerland in accordance with Swiss law.
- <sup>2</sup> Foreign forms of procedure may also be adopted or taken into consideration upon application of the requesting authorities where this is necessary for the recognition of a right abroad and provided there is no objection based on serious reasons relating to the person involved.
- <sup>3</sup> If a form of procedure of Swiss law is not recognised abroad and as a result a right deemed worthy of protection would not be upheld there, the Swiss courts or authorities may issue documents or take a person's oath pursuant to the form required by the foreign law.
- <sup>4</sup> The Hague Convention of 1st March 1954 on civil procedure applies to requests to and from Switzerland for service and the taking of evidence.

#### Article 11b

3. Advance of costs and securities for party costs
- Advance of costs and security for party costs are governed by the Code of Civil Procedure of 19 December 2008 (CPC).

#### Article 11c

4. Legal aid
- Legal aid is granted to persons domiciled abroad under the same conditions as apply to persons domiciled in Switzerland.

### Article 12 *Abrogated*

*Section 3: Applicable law*

**Article 13**

I. Scope of conflict rules

The reference to a foreign law in this Act includes all the provisions which under such law are applicable to the case. The application of a foreign law is not precluded by the mere fact that a provision is considered to have a public law character.

**Article 14**

II. Renvoi

<sup>1</sup> When the applicable law refers back to Swiss law or to another foreign law, such renvoi shall be taken into account only if this Act so provides.

<sup>2</sup> In matters of personal or family status, a renvoi from the foreign law to Swiss law is accepted.

**Article 15**

III. Exception clause

<sup>1</sup> As an exception, any law referred to by this Act is not applicable if, considering all the circumstances, it is apparent that the case has only a very loose connection with such law and that the case has a much closer connection with another law.

<sup>2</sup> This provision does not apply where a choice of law has been made.

**Article 16**

IV. Establishing foreign law

<sup>1</sup> The contents of the foreign law shall be established by the authority on its own motion. For this purpose, the cooperation of the parties may be requested. In matters involving an economic interest, the task of establishing foreign law may be assigned to the parties.

<sup>2</sup> Swiss law applies if the contents of the foreign law cannot be established.

**Article 17**

V. Reservation of Swiss public policy

The application of provisions of foreign law is excluded if such application leads to a result that is incompatible with Swiss public policy.

**Article 18**

VI. Application of mandatory provisions of Swiss law

This Act is subject to those mandatory provisions of Swiss law which, by reason of their special aim, are applicable regardless of the law referred to by this Act.

**Article 19**

VII. Taking into consideration of mandatory provisions of foreign law

<sup>1</sup> When interests that are legitimate and clearly preponderant according to the Swiss conception of law so require, a mandatory provision of another law than the one referred to by this Act may be taken into consideration, provided that the situation dealt with has a close connection with such other law.

<sup>2</sup> In deciding whether such a provision is to be taken into consideration, one shall consider its aim and the consequences of its application, in order to reach a decision that is appropriate having regard to the Swiss conception of law.

*Section 4: Domicile, registered office and nationality*

## Article 20

I. Domicile, habitual residence and place of business of an individual

<sup>1</sup> Within the meaning of this Act, an individual:

- a. has his or her domicile in the state where he or she resides with the intent of establishing permanent residence;
- b. has his or her habitual residence in the state where he or she lives during a certain period of time, even if this period initially appears to be of limited duration;
- c. has his or her place of business in the state where the center of his or her professional or commercial activities is located.

<sup>2</sup> No individual may have more than one domicile at the same time. If an individual does not have a domicile anywhere, the habitual residence is the relevant place. The provisions of the Civil Code relating to domicile and residence are not applicable.

## Article 21

II. Registered office and place of business of companies and trusts

<sup>1</sup> For companies and trusts pursuant to Article 149a, the registered office is deemed to be the domicile.

<sup>2</sup> A registered office of a company is deemed to be located at the place designated in the articles of incorporation or in the articles of association. Failing such a designation, the registered office is located at the place where the company is in fact managed.

<sup>3</sup> A registered office of a trust is deemed to be located at the place where the trust is managed, as designated in the trust deed in writing or in any other form which permits it to be evidenced by a text. Failing such a designation, the registered office is located at the place where the trust is in fact managed.

<sup>4</sup> A place of business of a company or a trust is located in the state where its registered office is located or in any state where one of its branches is located.

## Article 22

III. Nationality

The nationality of an individual is to be determined according to the law of the state whose nationality is at issue.

## Article 23

IV. Multiple nationalities

<sup>1</sup> When a person has one or more foreign nationalities in addition to the Swiss nationality, jurisdiction based on citizenship shall be determined by reference to the Swiss nationality only.

<sup>2</sup> When a person has more than one nationality, the nationality of the state with which such person has the closest relationship shall be held exclusively relevant to determine the applicable law, unless this Act provides otherwise.

<sup>3</sup> If recognition of a foreign decision in Switzerland depends on a person's nationality, it is sufficient to take into consideration one of such person's nationalities.

## Article 24

V. Stateless persons and refugees

<sup>1</sup> A person is considered to be stateless when he or she is so recognized pursuant to the New York Convention Relating to the Status of Stateless Persons of 28 September 1954, or when such person's relationship to his or her national state is severed to such an extent that his or her situation is equivalent to that of a stateless person.

<sup>2</sup> A person is deemed to be a refugee when he or she is so defined pursuant to the Asylum Act of 5 October 1979.

<sup>3</sup> When this Act applies to stateless persons and to refugees, domicile replaces nationality.

*Section 5: Recognition and enforcement of foreign decisions*

**Article 25**

I. Recognition  
1. Principle

A foreign decision shall be recognized in Switzerland:

- a. if the judicial or administrative authorities of the state where the decision was rendered had jurisdiction;
- b. if the decision is no longer subject to any ordinary appeal or if it is a final decision; and
- c. if there is no ground for denial within the meaning of Article 27.

**Article 26**

2. Jurisdiction of foreign authorities

Foreign authorities have jurisdiction:

- a. if jurisdiction derives from a provision of this Act or, failing such a provision, if the defendant was domiciled in the state in which the decision was rendered;
- b. if, in matters involving an economic interest, the parties submitted to the jurisdiction of the authority that rendered the decision by means of an agreement valid under this Act;
- c. if, in matters involving an economic interest, the defendant proceeded on the merits without reservation; or
- d. if, in the case of a counterclaim, the authority that rendered the decision had jurisdiction to entertain the main claim and if there is a nexus between the claim and counterclaim.

**Article 27**

3. Grounds for denial

<sup>1</sup> Recognition of a foreign decision must be denied in Switzerland if such decision is manifestly incompatible with Swiss public policy.

<sup>2</sup> Recognition of a decision must also be denied if a party establishes:

- a. that it did not receive proper notice under either the law of its domicile or that of its habitual residence, unless such party proceeded on the merits without reservation;
- b. that the decision was rendered in violation of fundamental principles pertaining to the Swiss conception of procedural law, including the fact that the said party did not have an opportunity to present its defense;
- c. that a dispute between the same parties and with respect to the same subject matter is the subject of a pending proceeding in Switzerland or has already been decided there, or that such dispute has previously been decided in a third state, provided that the latter decision fulfils the prerequisites for its recognition.

<sup>3</sup> Furthermore, a foreign decision may not be reviewed on the merits.

**Article 28**

II. Enforceability A decision that is recognized pursuant to Articles 25 to 27 shall be declared enforceable upon request of the interested party.

### Article 29

III. Procedure <sup>1</sup> The request for recognition or enforcement shall be filed with the competent authority of the canton where the foreign decision is relied upon. Such request must be supported by:

- a. a full certified copy of the decision;
- b. a statement certifying that the decision may no longer be appealed in the ordinary way or that it is final; and
- c. in case of a default judgment, an official document establishing that the defaulting party was given proper notice and had the opportunity to present its defense.

<sup>2</sup> The proceedings shall take place on notice to the party opposing recognition and enforcement; such party may present its defense.

<sup>3</sup> When a foreign decision is relied upon with respect to a preliminary issue, the authority before which the case is pending may itself rule on the recognition.

### Article 30

IV. Court-approved settlement Articles 25 to 29 apply to court-approved settlements that are deemed equivalent to a court decision in the state where they have been entered.

### Article 31

V. Jurisdiction in the absence of a dispute Articles 25 to 29 apply by analogy to the recognition and enforcement of a decision or a deed issued by a court in the absence of a dispute.

### Article 32

VI. Entry in the register of civil status <sup>1</sup> A foreign decision or deed pertaining to civil status shall be recorded in the register of civil status pursuant to a decision of the cantonal supervising authority in matters of civil status.

<sup>2</sup> The permission to record shall be granted provided that the requirements set forth in Articles 25 to 27 are fulfilled.

<sup>3</sup> The persons concerned shall first be heard if it is not established that the rights of the parties have been sufficiently respected during the proceedings in the foreign state where the decision was rendered.

## Chapitre 2: Individuals

### Article 33

I. Principle <sup>1</sup> Whenever this Act does not contain specific provisions, the Swiss judicial or administrative authorities of the domicile have jurisdiction over matters pertaining to the status of individuals; these authorities shall apply the law of the domicile.

<sup>2</sup> However, infringements of personal rights are governed by the provisions of this Act relating to torts (Article 129 *et seq.*).

### Article 34

II. Capacity to <sup>1</sup> The capacity to have rights and obligations is governed by Swiss law.

have rights and obligations     <sup>2</sup> The law applicable to the legal relationship that presupposes the capacity to have rights and obligations determines when such capacity begins and ends.

**Article 35**

III. Capacity to exercise rights and obligations  
1. Principle     The capacity to exercise rights and obligations is governed by the law of the domicile. Once acquired, the capacity to exercise rights and obligations is not affected by a change of domicile.

**Article 36**

2. Finality of transactions     <sup>1</sup> A party to a legal transaction who lacks capacity under the law of the state of his or her domicile may not rely on such incapacity if he or she was capable under the law of the state where the transaction was made, unless the other party knew or should have known of the incapacity.  
<sup>2</sup> This rule does not apply to legal transactions pertaining to family law, inheritance law or real estate law.

**Article 37**

IV. Name  
1. In general     <sup>1</sup> The name of a person domiciled in Switzerland is governed by Swiss law. The name of a person domiciled outside Switzerland is governed by the law referred to by the rules of private international law of the state where such person is domiciled.  
<sup>2</sup> However, a person may apply to have his or her name governed by his or her national law.

**Article 38**

2. Change of name     <sup>1</sup> The Swiss authorities at the domicile of the applicant have jurisdiction to entertain an application for a change of name.  
<sup>2</sup> Swiss nationals who do not have a domicile in Switzerland may apply for a change of name to the authority of their canton of origin.  
<sup>3</sup> The prerequisites and effects of a change of name are governed by Swiss law.

**Article 39**

3. Change of name effected in a foreign country     A change of name effected in a foreign country shall be recognized in Switzerland if it is valid in the state of domicile or in the national state of the applicant.

**Article 40**

4. Entry in the civil status register     A name shall be entered in the registers concerning civil status in accordance with the Swiss principles regulating the keeping of such registers.

**Article 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 have jurisdiction to issue a declaration of disappearance.  
<sup>2</sup> The Swiss courts also have jurisdiction to issue a declaration of disappearance where justified by a legitimate interest.  
<sup>3</sup> The prerequisites and effects of a declaration of disappearance are governed by Swiss law.



## Article 42

2. Declaration of disappearance and of death issued in a foreign country

A declaration of disappearance or of death issued in a foreign country shall be recognized in Switzerland if it is issued in the state of the last known domicile or the national state of the missing person.

## Chapitre 3: Marriage

### Section 1: *Celebration of marriage*

## Article 43

I. Jurisdiction

<sup>1</sup> The Swiss authorities have jurisdiction to celebrate a marriage if one of the prospective spouses is domiciled in Switzerland or has Swiss nationality.

<sup>2</sup> Foreign prospective spouses who are not domiciled in Switzerland may also be authorized by the competent authority to marry there, provided such marriage is recognized in the state of their domicile or in their national state.

<sup>3</sup> Such authorization may not be denied on the sole ground that a divorce granted or recognized in Switzerland is not recognized in the foreign country.

## Article 44

II. Applicable law

The marriage celebration in Switzerland is governed by Swiss law.

## Article 45

III. Marriage celebrated in a foreign country

<sup>1</sup> A marriage that was validly celebrated in a foreign country shall be recognized in Switzerland.

<sup>2</sup> If either prospective spouse is a Swiss national or if both prospective spouses have their domicile in Switzerland, a marriage celebrated in a foreign country shall be recognized, unless it was celebrated in a foreign country with the clear intent of avoiding the grounds of nullity provided for by Swiss law.

<sup>3</sup> A marriage that was validly celebrated in a foreign country between persons of the same sex shall be recognized in Switzerland as a registered partnership.

## Article 45a

IV. Annulment of marriage

<sup>1</sup> The Swiss courts of the domicile or, in the absence of a domicile, those of the place of conclusion of the marriage or the place of origin of either spouse have jurisdiction to entertain an action for annulment of marriage.

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

<sup>3</sup> Articles 62 to 64 apply by analogy to provisional measures and to the secondary effects.

<sup>4</sup> Foreign decisions on annulment of marriage shall be recognized in Switzerland if they have been rendered in the state where the marriage has been concluded. Article 65 is applicable by analogy if the claim has been brought by one of the spouses.

*Section 2: Personal effects of marriage*

**Article 46**

I. Jurisdiction  
1. Principle

The Swiss judicial or administrative authorities of the domicile or, in the absence of a domicile, those of the habitual residence of either spouse have jurisdiction to entertain actions or other measures relating to the effects of marriage.

**Article 47**

2. Jurisdiction at the place of origin

When the spouses have neither a domicile nor an habitual residence in Switzerland, and at least one of them is a Swiss national, the judicial or administrative authorities at the place of origin have jurisdiction to entertain actions or other measures relating to the effects of marriage, provided such action or petition cannot be filed at the domicile or at the habitual residence of either spouse, or provided that such filing there cannot reasonably be required.

**Article 48**

II. Applicable law  
1. Principle

<sup>1</sup> The effects of marriage are governed by the law of the state in which the spouses are domiciled.  
<sup>2</sup> When the spouses are not domiciled in the same state, the effects of marriage are governed by the law of that state of the domicile with which the case has the closest connection.  
<sup>3</sup> When the Swiss judicial or administrative authorities at the place of origin have jurisdiction pursuant to Article 47, such authorities shall apply Swiss law.

**Article 49**

2. Maintenance obligations

Maintenance obligations between spouses are governed by the Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations.

**Article 50**

III. Foreign decisions or measures

Foreign decisions or measures relating to the effects of marriage shall be recognized in Switzerland provided that they were rendered in the state of domicile or habitual residence of either spouse.

*Section 3: Marital property relations*

**Article 51**

I. Jurisdiction

The following courts or authorities have jurisdiction to entertain actions and to order measures relating to marital property:

- a. with respect to the liquidation of marital property upon the death of either spouse: the Swiss judicial or administrative authorities having jurisdiction to deal with the inheritance estate (Art. 86 to 89);
- b. with respect to the liquidation of marital property upon a divorce or a separation: the Swiss judicial authorities having jurisdiction in this respect (Art. 59, 60, 63, 64);
- c. in all other cases: the Swiss judicial or administrative authorities having jurisdiction to rule on the personal effects of marriage (Art. 46, 47).

## Article 52

II. Applicable law  
1. Choice of law  
a. Principle

<sup>1</sup> Marital property relations are 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 after the marriage celebration, or the law of a state of which either of them is a national. Article 23, paragraph 2, does not apply.

## Article 53

b. Specific conditions

<sup>1</sup> A choice of law must be agreed in writing or result with certainty from the provisions of a marital property agreement; furthermore, such choice is governed by the chosen law.  
<sup>2</sup> A choice of law may be made or amended at any time. A choice of law made after the marriage celebration has retroactive effect as of the date of the marriage, unless otherwise agreed.  
<sup>3</sup> The chosen law remains applicable as long as the spouses have not amended or revoked such choice.

## Article 54

2. Absent a choice of law  
a. Principle

<sup>1</sup> Absent a choice of law, marital property relations are governed:  
a. by the law of the state in which both spouses are domiciled at the same time, or, if that is not the case,  
b. by the law of the state in which both spouses were for the last time domiciled at the same time.  
<sup>2</sup> If the spouses were never domiciled at the same time in the same state, their common national law applies.  
<sup>3</sup> Spouses who were never domiciled in the same state and who do not have a common nationality are subject to the Swiss rules about separate property.

## Article 55

b. Mutability and retroactivity in case of change of domicile

<sup>1</sup> If the spouses' domicile is transferred from one state to another, the law of the new domicile applies and has retroactive effect as of the day of the marriage. Spouses may exclude retroactivity by so agreeing in writing.  
<sup>2</sup> A change of domicile has no effect on the applicable law if the spouses have agreed in writing to continue the application of the former law or if they are bound by a marital property agreement.

## Article 56

3. Form of marital property agreements

A marital property agreement is valid as to form if it fulfils the requirements of the law applicable to the substance or of the law of the place where the agreement was entered into.

## Article 57

4. Legal relationships with third parties

<sup>1</sup> The effects of marital property relations on a legal relationship between one spouse and a third party are governed by the law of the state in which such spouse was domiciled at the time when such relationship was initiated.  
<sup>2</sup> However, these effects are governed by the law applicable to the marital property relations if the third party knew or should have known such law at the time when the legal relationship was initiated.

### Article 58

III. Foreign decisions

<sup>1</sup> Foreign decisions relating to marital property relations 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 applies to the marital property relations pursuant to this Act; or
- d. to the extent that they relate to real property, if they were rendered, or are recognized, in the state in which such real property is located.

<sup>2</sup> The recognition of decisions relating to marital property relations taken in the context of measures of protection of the marital union, or upon a death, a declaration of nullity of marriage, a divorce or a separation is governed by the provisions of this Act relating to the personal effects of marriage, to divorce or to inheritance (Art. 50, 65 and 96).

### Section 4: *Divorce and legal separation*

### Article 59

I. Jurisdiction  
1. Principle

The following courts have jurisdiction to entertain an action for divorce or legal separation:

- a. the Swiss courts at the domicile of the defendant spouse;
- b. the Swiss courts at the domicile of the plaintiff spouse, provided that the latter has been residing in Switzerland for a year or is a Swiss national.

### Article 60

2. Jurisdiction at the place of origin

When the spouses are not domiciled in Switzerland and at least one of them is a Swiss national, the courts at the place of origin have jurisdiction to entertain an action for divorce or legal separation, provided the action cannot be brought at the domicile of either spouse or cannot reasonably be required to be brought there.

### Article 61

II. Applicable law

Divorce and legal separation are governed by Swiss law.

### Article 62

III. Provisional measures

<sup>1</sup> A Swiss court before which an action for divorce or legal separation is pending has jurisdiction to order provisional measures, except if such court clearly lacks jurisdiction to decide on the merits or if such lack of jurisdiction is established in a decision having *res judicata* effect.

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

<sup>3</sup> The above does not affect the provisions of this Act regarding maintenance obligations between spouses (Art. 49), the effects of a parent-child relationship (Art. 82 and 83), and the protection of minors (Art. 85).

### Article 63

IV. Subsequent effects

<sup>1</sup> Swiss courts having jurisdiction to entertain an action for divorce or legal separation

also have jurisdiction to rule on the subsequent effects thereof. This provision does not affect the provisions of this Act relating to the protection of minors (Art. 85).

<sup>1bis</sup> Swiss courts have exclusive jurisdiction to rule upon claims for the allocation of occupational pension against a Swiss pension fund.

<sup>2</sup> Swiss law governs the subsequent effects of the divorce or the legal separation. This provision does not affect the provisions of this Act relating to the name (Art. 37 to 40), to maintenance obligations between spouses (Art. 49), to marital property relations (Art. 52 to 57), to the effects of a parent-child relationship (Art. 82 and 83), and to the protection of minors (Art. 85).

#### Article 64

V. Supplementing or amending decisions

<sup>1</sup> Swiss courts have jurisdiction to entertain an action to supplement or amend a decree of divorce or legal separation if they have rendered such decree or if they have jurisdiction pursuant to Articles 59 or 60. This provision does not affect the rules of this Act regarding the protection of minors (Art. 85).

<sup>1bis</sup> Swiss courts have exclusive jurisdiction to rule upon claims for the allocation of occupational pension against a Swiss pension fund. In the absence of a jurisdiction within the meaning of paragraph 1, Swiss courts of the seat of the pension fund have jurisdiction.

<sup>2</sup> Swiss law governs an action for supplementing or amending a divorce or a legal separation decree. This provision does not affect the rules of this Act relating to the name (Art. 37 to 40), to maintenance obligations between spouses (Art. 49), to marital property relations (Art. 52 to 57), to the effects of a parent-child relationship (Art. 82 and 83), and to the protection of minors (Art. 85).

#### Article 65

VI. Foreign decisions

<sup>1</sup> Foreign decrees of divorce or legal separation shall be recognized in Switzerland if they have been rendered in the state of domicile or habitual residence, or in the national state, of either spouse, or if they are recognized in one of these states.

<sup>2</sup> However, a decree that was rendered in a state of which neither spouse or only the plaintiff spouse is a national shall be recognized in Switzerland only:

- a. if, at the time of filing the action, at least one of the spouses was domiciled or had his or her habitual residence in that state and the defendant spouse was not domiciled in Switzerland;
- b. if the defendant spouse submitted to the jurisdiction of the foreign court without reservation; or
- c. if the defendant spouse expressly consented to recognition of the decree in Switzerland.

### Chapitre 3a: Registered partnership

#### Article 65a

I. Application of chapter 3

The provisions of chapter 3 are to be applied by analogy to registered partnerships, except for Articles 43, paragraph 2.

#### Article 65b

II. Forum in the event of

When the partners are not domiciled in Switzerland and neither of them is Swiss, the Swiss courts at the place of registration have jurisdiction to entertain actions or

dissolution of a registered partnership petitions relating to the dissolution of a registered partnership, provided that the action or petition cannot be brought at the domicile of either partner or provided that such filing there cannot reasonably be required.

#### **Article 65c**

III. Applicable law<sup>1</sup> Where the law applicable pursuant to chapter 3 contains no provisions applicable to the registered partnership, Swiss law is applicable, except as provided under Article 49.  
<sup>2</sup> In addition to the laws designated by Article 52, paragraph 2, the partners may choose the law of the State in which the partnership has been registered.

#### **Article 65d**

IV. Decisions or measures of the state of registration Foreign decisions and measures shall be recognized in Switzerland:  
a) if they were rendered in the state in which the partnership was registered, and  
b) if the action or petition could not have been brought, or it could not reasonably have been required of the partners that such action or petition be brought in a foreign state the jurisdiction of which is recognized in Switzerland in accordance with the provisions of chapter 3.

### **Chapitre 4: Parent-Child Relationship**

#### *Section 1 : Parent-child relationship by birth*

#### **Article 66**

I. Jurisdiction  
1. Principle The Swiss courts at the child's habitual residence or at either parent's domicile have jurisdiction to entertain an action for a declaration establishing or denying a parent-child relationship.

#### **Article 67**

2. Jurisdiction at the place of origin When the parents are not domiciled in Switzerland and the child does not have his habitual residence there, the courts at the Swiss place of origin of either parent have jurisdiction to entertain an action for a declaration establishing or denying a parent-child relationship, provided such action cannot be brought at either parent's domicile nor at the child's habitual residence, or provided that one cannot reasonably be required to bring such action there

#### **Article 68**

II. Applicable law  
1. Principle<sup>1</sup> The establishment, declaration and denial of a parent-child relationship are governed by the law of the state of the child's habitual residence.  
<sup>2</sup> However, if neither parent is domiciled in the state of the child's habitual residence and if the parents and the child are nationals of the same state, the law of such state applies.

#### **Article 69**

2. Relevant time<sup>1</sup> In order to determine the law applicable to the establishment, declaration or denial of a parent-child relationship, the date of birth shall be used as the reference date.  
<sup>2</sup> However, in case of a judicial declaration or denial of a parent-child relationship, the

date of the action shall be used as the reference date if the child's overriding interest so requires.

### **Article 70**

III. Foreign decisions

Foreign decisions relating to a declaration or denial of a parent-child relationship shall be recognized in Switzerland if they were rendered in the state of the child's habitual residence or in the child's national state or in the state of domicile or the national state of the mother or of the father.

## *Section 2: Acknowledgment*

### **Article 71**

I. Jurisdiction

<sup>1</sup> The Swiss authorities at the child's place of birth or habitual residence, as well as those of the domicile or the place of origin of the mother or father, have jurisdiction to receive the acknowledgment of a child.

<sup>2</sup> When such acknowledgment takes place in a judicial proceeding, in which the parent-child relationship is legally relevant, the judge before whom the action is pending may also receive the acknowledgment.

<sup>3</sup> The courts having jurisdiction to entertain an action for a declaration or denial of a parent-child relationship also have jurisdiction to rule on objections to an acknowledgment (Art. 66 and 67).

### **Article 72**

II. Applicable law

<sup>1</sup> An acknowledgment in Switzerland may be made in accordance with the law of the state of the child's habitual residence, the law of the child's national state, or the law of the domicile or of the national state of the mother or the father. The reference date is the date of the acknowledgment.

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

<sup>3</sup> Objections to an acknowledgment are governed by Swiss law.

### **Article 73**

III. Acknowledgment made or objected to in a foreign country

<sup>1</sup> The acknowledgment of a child made in a foreign country shall be recognized in Switzerland provided it is valid in the state of the child's habitual residence, in the child's national state, or in the state of domicile or the national state of the mother or the father.

<sup>2</sup> Foreign decisions on objections to an acknowledgment shall be recognized in Switzerland if they were rendered in one of the states mentioned in paragraph 1.

### **Article 74**

IV. Legitimation of an illegitimate child

Article 73 applies by analogy to the legitimation of an illegitimate child in a foreign country.

## *Section 3: Adoption*

### **Article 75**

- I. Jurisdiction  
1. Principle
- <sup>1</sup> The Swiss judicial or administrative authorities at the domicile of the adopting person or adopting spouses have jurisdiction to rule on the adoption.
- <sup>2</sup> Courts having jurisdiction to entertain actions for the declaration or denial of a parent-child relationship also have jurisdiction to decide on challenges against adoptions (Art. 66 and 67).

#### Article 76

2. Jurisdiction at the place of origin
- The Swiss judicial or administrative authorities at the place of origin have jurisdiction to rule on an adoption provided that the adopting person or adopting spouses are not domiciled in Switzerland, that at least one of them is a Swiss national, and provided further that they cannot adopt at the place of their foreign domicile or that one cannot reasonably require them to initiate an adoption proceeding there.

#### Article 77

- II. Applicable law
- <sup>1</sup> The requirements for an adoption decreed in Switzerland are governed by Swiss law.
- <sup>2</sup> Where it appears that an adoption would not be recognized in the state of the domicile or the national state of the adopting person or adopting spouses and that a serious prejudice would result for the child, the authority shall also take into account the requirements set forth by the law of such state. If, even then, recognition does not appear to be assured, the adoption shall not be decreed.
- <sup>3</sup> An action to annul an adoption decreed in Switzerland is governed by Swiss law. An adoption decreed in a foreign country may be annulled in Switzerland only if a ground for annulment also exists under Swiss law.

#### Article 78

- III. Adoptions and similar institutions of foreign law
- <sup>1</sup> Adoptions made in a foreign country shall be recognized in Switzerland provided they were decreed in the state of domicile or the national state of the adopting person or adopting spouses.
- <sup>2</sup> Adoptions and similar institutions of foreign law, the effects of which differ substantially from the parent-child relationship within the meaning of Swiss law shall be recognized in Switzerland only with the effects that are attached to them in the state where they were decreed.

#### Section 4: *Effects of a parent-child relationship*

#### Article 79

- I. Jurisdiction  
1. Principle
- <sup>1</sup> Swiss courts at the child's habitual residence or those of the domicile and, in the absence of a domicile, those of the habitual residence of the respondent parent have jurisdiction to entertain an action relating to the relationship between parents and child, including an action relating to child support.
- <sup>2</sup> The above provision does not affect the provisions of this Act relating to the name (Art. 33, 37 to 40), to the protection of minors (Art. 85) and to inheritance (Art. 86 to 89).

#### Article 80

2. Jurisdiction at the place of origin
- When neither the child nor the respondent parent have a domicile or habitual residence in Switzerland and one of them is a Swiss national, the courts at the place of origin have jurisdiction.



### Article 81

3. Third-party claims

The Swiss courts referred to in Articles 79 and 80 also have jurisdiction to entertain:

- a. claims for maintenance payments by authorities which have made advances;
- b. claims by the mother for maintenance payments and reimbursement of expenses incurred in relation to the birth.

### Article 82

II. Applicable law  
1. Principle

<sup>1</sup> The relationship between parents and child is governed by the law of the state of the child's habitual residence.

<sup>2</sup> However, if neither parent is domiciled in the state of the child's habitual residence and if the parents and the child are nationals of the same state, the law of such state applies.

<sup>3</sup> The above provisions do not affect the rules of this Act relating to the name (Art. 33, 37 to 40), to the protection of minors (Art. 85) and to inheritance (Art. 90 to 95).

### Article 83

2. Maintenance obligations

<sup>1</sup> Maintenance obligations between parents and child are governed by the Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations.

<sup>2</sup> To the extent that the mother's rights to maintenance and the reimbursement of expenses incurred in relation to the birth are not dealt with in the said Convention, its provisions apply by analogy.

### Article 84

III. Foreign decisions

<sup>1</sup> Foreign decisions relating to the relationship between parents and child shall be recognized in Switzerland if they were rendered in the state of the child's habitual residence or in the state of domicile or habitual residence of the respondent parent.

<sup>2</sup> The above provision does not affect the rules of this Act relating to the name (Art. 39), to the protection of minors (Art. 85) and to inheritance (Art. 96).

## Chapitre 5: Guardianship, Protection of Adults and Other Protective Measures

### Article 85

<sup>1</sup> In respect of protection of children, the jurisdiction of the Swiss courts or authorities, the applicable law as well as the recognition and enforcement of foreign decisions or measures are governed by the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

<sup>2</sup> In respect of protection of adults, the jurisdiction of the Swiss courts or authorities, the applicable law as well as the recognition and enforcement of foreign decisions or measures are governed by the Hague Convention of 13 January 2000 on the International Protection of Adults.

<sup>3</sup> The Swiss courts or authorities also have jurisdiction where the protection of a person or of his or her property so requires.

<sup>4</sup> The measures taken in a State which is not party of the Conventions referred to in paragraphs 1 and 2 are recognized provided that they have been taken or recognized in the State of the habitual residence of the child or the adult.

## Chapitre 6: Inheritance

### Article 86

- I. Jurisdiction  
1. Principle
- <sup>1</sup> Swiss judicial or administrative authorities at the last domicile of the deceased have jurisdiction to take the measures necessary to deal with the inheritance estate and to entertain disputes relating thereto.
- <sup>2</sup> The above provision does not affect the exclusive jurisdiction claimed by the state where real property is located.

### Article 87

2. Jurisdiction at the place of origin
- <sup>1</sup> Judicial or administrative authorities at the deceased's place of origin have jurisdiction to deal with the inheritance estate of a Swiss national domiciled in a foreign country at the time of death to the extent that the foreign authorities do not deal with such estate.
- <sup>2</sup> The authorities at the place of origin always have jurisdiction when a Swiss national having his or her last domicile in a foreign country submits, in a will or an inheritance agreement, his or her entire estate or the portion thereof located in Switzerland to the jurisdiction or to the law of Switzerland. This provision does not affect Article 86, paragraph 2.

### Article 88

3. Jurisdiction at the situs of property
- <sup>1</sup> If a foreign national domiciled in a foreign country at the time of death had property in Switzerland, Swiss judicial or administrative authorities at the place where such property is located have jurisdiction to deal with the portion of the estate located in Switzerland to the extent that the foreign authorities do not deal with such portion of the estate.
- <sup>2</sup> If there is property located in different places, the Swiss authority before which the matter was first brought has jurisdiction.

### Article 89

4. Conservatory measures
- If the deceased had his or her last domicile in a foreign country and had property in Switzerland, the Swiss authorities at the place where such property is located shall take the measures necessary to the interim protection of such property.

### Article 90

- II. Applicable law  
1. Last domicile in Switzerland
- <sup>1</sup> The inheritance estate of a person who had his or her last domicile in Switzerland is governed by Swiss law.
- <sup>2</sup> A foreign national may, however, submit by will or inheritance agreement his or her estate to the law of one of his or her national states. Such submission is void if, at the time of death, the deceased no longer had such nationality or had acquired Swiss nationality.

### Article 91

2. Last domicile in a foreign country
- <sup>1</sup> The inheritance estate of a person who had his or her last domicile in a foreign country is governed by the law referred to by the private international law rules of the

state in which the deceased was domiciled.

<sup>2</sup> To the extent that Swiss judicial or administrative authorities have jurisdiction pursuant to Article 87, the inheritance estate of a Swiss deceased who had his or her last domicile in a foreign country is governed by Swiss law, unless the deceased expressly provided by will or inheritance agreement for the application of the law of his or her last domicile.

### Article 92

3. Scope of the law governing inheritance and distribution of the estate

<sup>1</sup> The law applicable to the inheritance estate determines what is included in the estate, who is entitled to inherit and for what share, who is liable for the debts of the estate, which legal institutions of inheritance law may be relied upon, and which measures may be ordered and subject to which requirements.

<sup>2</sup> The implementing details are governed by the law of the state whose authority has jurisdiction. Such law governs *inter alia* conservatory measures and the distribution of the estate, including the administration by an executor.

### Article 93

4. Form requirements

<sup>1</sup> The validity of wills as to form is governed by the Hague Convention of 5 October 1961 on the Conflict of Laws Relating to the Form of Testamentary Dispositions.

<sup>2</sup> This Convention applies by analogy to the form requirements in respect of other provisions made for the event of death.

### Article 94

5. Capacity to dispose

A person is capable of disposing for the event of death if, at the time of making the disposition, he or she has the capacity to do so under the law of the state of his or her domicile or habitual residence, or under the law of one of the states of which he or she is a national.

### Article 95

6. Inheritance agreements and other reciprocal provisions for the event of death

<sup>1</sup> Inheritance agreements are governed by the law of the state in which the disposing party is domiciled at the time of entering into the agreement.

<sup>2</sup> If a disposing party submits, in the agreement, his estate to the law of the state of which he or she is a national, such law applies in lieu of the law of the domicile.

<sup>3</sup> Reciprocal provisions for the event of death are valid if they are consistent with the law of the domicile of each disposing party or, if the disposing parties are nationals of the same state, with the law of that state if they have chosen such law.

<sup>4</sup> The above provisions do not affect the rules of this Act regarding form requirements and the capacity to dispose (Art. 93 and 94).

### Article 96

III. Foreign decisions, measures, documents and rights

<sup>1</sup> Decisions, measures and documents relating to, as well as rights deriving from, an inheritance estate in a foreign country shall be recognized in Switzerland:

- a. if they are rendered, taken, drawn up or declared in the state of the deceased's last domicile or in the state to the law of which the deceased submitted his or her estate, or if they are recognized in any one of these states; or
- b. has if they relate to real property and were rendered, taken, drawn up or declared in the state in which such property is located, or if they are recognized in such state.

<sup>2</sup> With respect to real property located in a state which claims exclusive jurisdiction,

only the decisions, measures or documents originating from that state shall be recognized.

<sup>3</sup> Conservatory measures ordered in the state where the deceased's property is located shall be recognized in Switzerland.

## Chapitre 7: Property Law

### Article 97

I. Jurisdiction  
1. Real property

The courts at the place where real property is located in Switzerland have exclusive jurisdiction to entertain actions relating to real property rights.

### Article 98

2. Personal property

<sup>1</sup> Swiss courts at the domicile or, in the absence of a domicile, at the habitual residence of the defendant have jurisdiction to entertain actions relating to personal property rights.

<sup>2</sup> Swiss courts at the place where the property is located have also jurisdiction.

### Article 98a

3. Cultural property

The court at the domicile or at the registered office of the defendant or the court at the place where the cultural property is located has jurisdiction to entertain actions for recovery within the meaning of Article 9 of the Act on the Transfer of Cultural Property of 20 June 2003.

### Article 99

II. Applicable law  
1. Real property

<sup>1</sup> Real property rights are governed by the law of the place where the real property is located.

<sup>2</sup> Claims arising out of nuisances originating from real property are governed by the provisions of this Act relating to torts (Art. 138).

### Article 100

2. Personal property  
a. Principle

<sup>1</sup> The acquisition and loss of personal property rights are governed by the law of the place where the personal property is located at the time of the facts on which the acquisition or loss is based.

<sup>2</sup> The substance and exercise of personal property rights are governed by the law of the place where the personal property is located.

### Article 101

b. Goods in transit

The acquisition and loss, through legal transactions, of property rights on goods in transit are governed by the law of the state of destination.

### Article 102

c. Goods carried into Switzerland

<sup>1</sup> When personal property is carried from a foreign country into Switzerland and the acquisition or loss of property rights has not yet taken place in the foreign country, the facts that have occurred in the foreign country are deemed to have occurred in Switzerland.

<sup>2</sup> When goods enter Switzerland and are subject to a retention of title validly created in a foreign country, but which does not meet the requirements of Swiss law, such retention of title nonetheless remains valid for three months.

<sup>3</sup> Such a retention of title created in a foreign country may not be asserted against a third party acting in good faith.

### Article 103

d. Retention of title to goods intended for export

A retention of title created on personal property intended for export is governed by the law of the state of destination.

### Article 104

e. Choice of law

<sup>1</sup> Parties may submit the acquisition and loss of property rights to the law of the state of shipment or of destination or to the law which governs the underlying legal transaction.

<sup>2</sup> Such choice of law may not be asserted against third parties.

### Article 105

3. Special rules  
a. Pledging receivables, negotiable instruments and other rights

<sup>1</sup> The pledging of receivables, negotiable instruments or other rights is governed by the law chosen by the parties. Such choice of law may not be asserted against third parties.

<sup>2</sup> Failing a choice of law, the pledging of receivables and negotiable instruments is governed by the law of the state of the obligee-pledgee's habitual residence; the pledging of other rights is governed by the law which applies to such rights.

<sup>3</sup> A law other than the one governing the pledged right may not be asserted against the debtor.

### Article 106

b. Warrants incorporating title to goods

<sup>1</sup> The law referred to in a warrant determines whether such warrant incorporates title to the goods. Failing such a reference, the issue is governed by the law of the state of the issuer's place of business.

<sup>2</sup> When a warrant incorporates title to goods, property rights relating to the warrant and to the goods are governed by the law applicable to the warrant considered as personal property.

<sup>3</sup> When several persons are asserting property rights to the goods, some directly, others on the basis of a warrant, the law applicable to the goods themselves determines which one of these rights prevails.

### Article 107

c. Means of transportation

The above provisions do not affect those provisions in other Acts relating to property rights on ships, aircraft or other means of transportation.

### Article 108

III. Foreign decisions

<sup>1</sup> Foreign decisions in matters of real property rights shall be recognized in Switzerland if they were rendered in the state in which the property is located or if they are recognized in such state.

<sup>2</sup> Foreign decisions in matters of personal property rights 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 is located, insofar as the

defendant had its habitual residence there.

## **Chapitre 7a: Securities Held with an Intermediary**

### **Article 108a**

I. Definition      Securities held with an intermediary are securities held with an intermediary as defined in the Hague Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary.

### **Article 108b**

II. Jurisdiction    <sup>1</sup> Swiss courts at the domicile or, in the absence of a domicile, at the habitual residence of the defendant have jurisdiction to entertain actions regarding securities held with an intermediary.  
<sup>2</sup> Swiss courts at the defendant's place of business also have jurisdiction to entertain actions regarding securities held with an intermediary arising out of the operations of such place of business.

### **Article 108c**

III. Applicable Law      The law applicable to securities held with an intermediary is governed by the Hague Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary.

### **Article 108d**

IV. Foreign decisions      Foreign decisions regarding securities held with an intermediary shall be recognized in Switzerland:  
a. if they were rendered in the state of the defendant's domicile or habitual residence;  
b. if they were rendered in the state of the defendant's place of business, provided the action arised out of the operations of this place of business.

## **Chapitre 8: Intellectual Property**

### **Article 109**

I. Jurisdiction      <sup>1</sup> Swiss courts of the defendant's domicile have jurisdiction to entertain actions pertaining to the validity or registration in Switzerland of intellectual property rights. When a defendant does not have a domicile in Switzerland, these actions shall be brought before the Swiss courts at the commercial office of the representative recorded in the register or, in the absence of such representative, before the courts at the place where the authority keeping the register has its office.  
<sup>2</sup> Actions pertaining to the violation of intellectual property rights shall be brought before the Swiss courts at the defendant's domicile or, in the absence of a domicile, at the defendant's habitual residence. Have also jurisdiction the Swiss courts at the place where the act or the result occurred and, to entertain actions pertaining to the operation of the place of business in Switzerland, the courts at the place of business.

### Article 110

II. Applicable law

<sup>1</sup> Intellectual property rights are governed by the law of the state in respect of which intellectual property protection is sought.

<sup>2</sup> With respect to claims arising out of tortious acts, the parties may always agree, after the damage has occurred, to apply the law of the forum.

<sup>3</sup> Agreements pertaining to intellectual property are governed by the provisions of this Act relating to contracts (Art. 122).

### Article 111

III. Foreign decisions

<sup>1</sup> Foreign decisions relating to the infringement of intellectual property rights shall be recognized in Switzerland:

a. if the decision was rendered in the state of the defendant's domicile; or

b. if the decision was rendered at the place where the act or the result occurred and if the defendant was not domiciled in Switzerland.

<sup>2</sup> Foreign decisions pertaining to the existence, validity or registration of intellectual property rights shall be recognized only if they were rendered in a state with respect to which the intellectual property protection is sought or if such decisions are recognized there.

## Chapitre 9: Law of Obligations

### Section 1: Contracts

#### Article 112

I. Jurisdiction  
1. Domicile and place of business

<sup>1</sup> Swiss courts at the domicile or, in the absence of a domicile, at the habitual residence of the defendant have jurisdiction to entertain actions arising out of a contract.

<sup>2</sup> Swiss courts at the defendant's place of business also have jurisdiction to entertain actions relating to an obligation arising out of the operation of such place of business.

#### Article 113

2. Place of performance

When the characteristic obligation of the contract must be performed in Switzerland, the action may also be brought before the Swiss Court at the place of performance.

#### Article 114

3. Consumer contracts

<sup>1</sup> With respect to contracts which meet the requirements stated in Article 120, paragraph 1, the action initiated by a consumer may be brought at the latter's choice before the Swiss court:

a. at his or her domicile or habitual residence; or

b. at the domicile or, in the absence of a domicile, at the habitual residence of the supplier.

<sup>2</sup> A consumer may not waive in advance jurisdiction at his or her domicile or habitual residence.

#### Article 115

4. Employment contracts

<sup>1</sup> Swiss courts at the defendant's domicile or at the place where the employee habitually performs his or her work have jurisdiction to entertain actions relating to employment

contracts.

<sup>2</sup> An action initiated by an employee may also be brought before the court of his or her domicile or habitual residence in Switzerland.

<sup>3</sup> Swiss courts of the place where the employee hired abroad is posted for a limited period to perform all or a part of the services for which he or she was employed, also have jurisdiction to entertain actions pertaining to terms of employment and salary in connection with such services.

### Article 116

II. Applicable law

1. In general  
a. Choice of law

<sup>1</sup> Contracts are governed by the law chosen by the parties.

<sup>2</sup> The choice of law must be express or result with certainty from the provisions of the contract or from the circumstances; it is further governed by the chosen law.

<sup>3</sup> The choice of law may be made or changed at any time. If a choice of law is made after entering into the contract, such choice has retroactive effect as of the time of entering into the contract. This provision does not affect the rights of third parties.

### Article 117

b. Failing a choice of law

<sup>1</sup> Failing a choice of law, contracts are governed by the law of the state with which they have the closest connection.

<sup>2</sup> Such a connection is deemed to exist with the state of the habitual residence of the party having to perform the characteristic obligation or, if the contract is entered into in the course of a professional or business activity, with the state of such party's place of business.

<sup>3</sup> Characteristic obligation means in particular:

- a. in contracts for the transfer of property: the transferor's obligation;
- b. in contracts pertaining to the use of property or of a right: the obligation of the party conferring such use;
- c. in contracts of mandate, contracts for work and other contracts to perform services: the service obligation;
- d. in contracts of deposit: the obligation of the depositary;
- e. in guarantee or suretyship agreements: the obligation of the guarantor or surety.

### Article 118

2. In particular  
a. Sale of personal property

<sup>1</sup> Sales of personal property are governed by the Hague Convention of 15 June 1955 on the Law Applicable to International Sales of Goods.

<sup>2</sup> The above provision does not affect Article 120.

### Article 119

b. Real property

<sup>1</sup> Agreements relating to real property or to the use of real property are governed by the law of the place where such property is located.

<sup>2</sup> A choice of law is allowed.

<sup>3</sup> However, the validity of the contract as to form is governed by the law of the state in which the real property is located, unless such state allows the application of another law. For real property located in Switzerland, the validity of the contract as to form is governed by Swiss law.

### Article 120

c. Consumer contracts

<sup>1</sup> Contracts pertaining to goods or services of ordinary consumption intended for a consumer's personal or family use, provided such use is not connected with the



consumer's professional or business activity, are governed by the law of the state of the consumer's habitual residence:

- a. if the supplier received the order in that state;
- b. if the contract was entered into after an offer or advertising in that state and if the consumer performed in that state the acts required to enter into the contract; or
- c. if the consumer was induced by the supplier to go to a foreign state for the purpose of delivering the order.

<sup>2</sup> No choice of law is allowed.

### Article 121

d. Employment contracts

<sup>1</sup> Employment contracts are governed by the law of the state in which the employee habitually performs his or her work.

<sup>2</sup> If the employee habitually performs his or her work in several states, the employment contract is governed by the law of the state of the place of business or, in the absence of a place of business, of the domicile or habitual residence of the employer.

<sup>3</sup> The parties may submit the employment contract to the law of the state in which the employee has his or her habitual residence or in which the employer has its place of business, domicile or habitual residence.

### Article 122

e. Agreements pertaining to intellectual property

<sup>1</sup> Agreements pertaining to intellectual property are governed by the law of the state in which the transferor or grantor of the intellectual property right has his or her habitual residence.

<sup>2</sup> A choice of law is allowed.

<sup>3</sup> Agreements made between an employer and an employee concerning intellectual property rights to inventions made by the employee in the course of performing his or her work are governed by the law applicable to the employment contract.

### Article 123

3. Common provisions  
a. Silence upon receipt of an offer

A party who does not respond to an offer to enter into an agreement is entitled to have the effects of such silence governed by the law of the state in which such party has its habitual residence.

### Article 124

b. Validity as to form

<sup>1</sup> As to form, contracts are valid if they meet the requirements set forth in the law applicable to the contract or in the law of the place where the contract was entered into.

<sup>2</sup> The form of a contract entered into between persons who are located in different states is valid if it meets the requirements set forth in the law of at least one of such states.

<sup>3</sup> The form of a contract is governed exclusively by the law applicable to the contract itself when, in order to protect a party, such law requires compliance with a specific form, unless such law allows the application of another law.

### Article 125

c. Means of performance and of inspection

The means of performance and of inspection are governed by the law of the state in which they are actually carried out.

### Article 126

- d. Agency
- <sup>1</sup> When agency is based on a contract, the relationship between the principal and the agent is governed by the law applicable to their contract.
  - <sup>2</sup> The requirements for the agent's acts to be binding on the principal and the contracting third party are governed by the law of the state of the agent's place of business or, failing such place of business or if the latter was not apparent for the contracting third party, by the law of the state in which the agent carries out his or her main activity in the case at hand.
  - <sup>3</sup> When the agent is bound to the principal by an employment contract and does not have his or her own place of business, such place of business is deemed to be at the principal's registered office.
  - <sup>4</sup> The law referred to in paragraph 2 also governs the relationship between an unauthorized agent and the third party.

*Section 2: Unjust enrichment*

**Article 127**

- I. Jurisdiction
- Swiss courts at the domicile or, in the absence of a domicile, at the habitual residence of the defendant have jurisdiction to entertain actions for unjust enrichment. Courts at the place of business in Switzerland have also jurisdiction to entertain actions pertaining to the operation of the place of business.

**Article 128**

- II. Applicable law
- <sup>1</sup> Claims for unjust enrichment are governed by the law which governs the legal relationship, either existing or assumed, on the basis on which the enrichment occurred.
  - <sup>2</sup> Failing such a relationship, these claims are governed by the law of the state in which the enrichment occurred; the parties may agree to apply the law of the forum.

*Section 3: Torts*

**Article 129**

- I. Jurisdiction
1. In general
- Swiss courts at the domicile or, failing a domicile, at the habitual residence of the defendant have jurisdiction to entertain actions in tort. Swiss courts at the place where the act or the result occurred have also jurisdiction as well as the courts at the place of business to entertain actions pertaining to the operation of the place of business in Switzerland.

**Article 130**

2. In particular
- <sup>1</sup> Swiss courts at the place where the event causing the damage occurred have jurisdiction to entertain actions relating to damages caused by a nuclear installation or by the transportation of nuclear substances.
  - <sup>2</sup> When such place cannot be ascertained, the action may be brought:
    - a. if liability lies with the operator of a nuclear installation, before the Swiss courts where such installation is located;
    - b. if liability lies with the holder of a transportation permit, before the Swiss courts at the place where such permit holder is domiciled or elected domicile for service of process.
  - <sup>3</sup> Actions to enforce the right of access directed against the keeper of a database may be brought before the courts mentioned in Article 129 or before the Swiss courts at the

place where the database is managed or used.

### Article 131

3. Direct action  
against an  
insurer

A direct action against an insurer of civil liability may be brought before the Swiss courts either at the insurer's place of business in Switzerland or at the place where the act or the result occurred.

### Article 132

II. Applicable  
law  
1. In general  
a. Choice of  
law

Parties may, at any time after the damage occurred, agree to apply the law of the forum.

### Article 133

b. Failing a  
choice of law

<sup>1</sup> When the tortfeasor and the injured party have their habitual residence in the same state, claims in tort are governed by the law of such state.

<sup>2</sup> When the tortfeasor and the injured party do not have an habitual residence in the same state, these claims are governed by the law of the state in which the tort was committed. However, if the result occurred in another state, the law of such state applies if the tortfeasor should have foreseen that the result would occur there.

<sup>3</sup> Notwithstanding the above, when a tort breaches a legal relationship existing between the tortfeasor and the injured party, claims based on such tort are governed by the law applicable to such legal relationship.

### Article 134

2. In particular  
a. Road traffic  
accidents

Claims arising out of road traffic accidents are governed by the Hague Convention of 4 May 1971 on the Law Applicable to Traffic Accidents.

### Article 135

b. Product  
liability

<sup>1</sup> Claims based on a defect, or defective description, of a product are governed at the option of the injured party:

- a. by the law of the state in which the tortfeasor has its place of business or, failing a place of business, its habitual residence; or
- b. by the law of the state in which the product was acquired, unless the tortfeasor proves that the product was introduced in the market of that state without its consent.

<sup>2</sup> When claims based on a defect, or defective description, of a product are governed by a foreign law, no other compensation may be awarded in Switzerland than that which would be awarded for such a damage pursuant to Swiss law.

### Article 136

c. Unfair  
competition

<sup>1</sup> Claims based on a tort of unfair competition are governed by the law of the state in whose market the result occurred.

<sup>2</sup> If the tort injures exclusively the business interests of a specific competitor, the applicable law is that of the injured firm's registered office.

<sup>3</sup> The above provisions do not affect Article 133, paragraph 3.

### Article 137

- d. Restraint of competition
- <sup>1</sup> Claims based on a restraint of competition are governed by the law of the state in whose market the restraint has direct effects on the injured party.
- <sup>2</sup> If claims based on a restraint of competition are governed by a foreign law, no compensation may be awarded in Switzerland other than that which would be awarded for a restraint of competition pursuant to Swiss law.

**Article 138**

- e. Nuisances
- Claims arising out of damaging nuisances originating from real property are 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 result occurred.

**Article 139**

- f. Infringement of personal rights
- <sup>1</sup> Claims based on the infringement of personal rights by the media, including press, radio, television or any other public information medium, are governed at the option of the injured party:
- a. by the law of the state in which the injured party has its habitual residence, provided the tortfeasor should have expected that the result would occur in that state;
  - b. by the law of the state in which the tortfeasor has its place of business or habitual residence; or
  - c. by the law of the state in which the result of the infringement occurs, provided the tortfeasor should have expected that the result would occur in that state.
- <sup>2</sup> The right of reply to media having a periodical character is exclusively governed by the law of the state in which the publication appeared or the program was broadcasted.
- <sup>3</sup> Paragraph 1 also applies to infringements of personal rights resulting from the processing of personal data, as well as to obstacles to the exercise of the right of access to personal data.

**Article 140**

3. Special rules
- a. Multiple tortfeasors
- If several persons have taken part in the commission of a tort, the applicable law shall be determined separately for each one of them regardless of their role.

**Article 141**

- b. Direct action against an insurer
- The injured party may bring the action directly against the insurer of the person liable if the law applicable to the tort or the law applicable to the insurance contract so provides.

**Article 142**

4. Scope of the applicable law
- <sup>1</sup> The law applicable to a tort determines in particular the capacity to be liable in tort, the prerequisites and extent of liability, as well as the person liable.
- <sup>2</sup> Rules of conduct and safety in force at the place of the tort are taken into consideration.

*Section 4: Common provisions*

**Article 143**

- I. Multiple
- When an obligee is entitled to assert a claim against several obligors, the legal

obligors  
1. Claims  
against several  
obligors

consequences are determined under the law governing the relationship between the obligee and the obligor against whom the claim is made.

#### Article 144

2. Action for  
contribution  
among  
coobligors

<sup>1</sup> An obligor has an action for contribution against a co-obligor, either directly or by subrogation, only to the extent that the laws governing both obligations allow such action.

<sup>2</sup> The exercise of an action for contribution against a co-obligor is governed by the law applicable to the obligation of such co-obligor towards the obligee. Issues concerning exclusively the relationship between the obligee and the obligor seeking contribution are governed by the law applicable to such obligor's obligation.

<sup>3</sup> The possibility for an institution entrusted with a public function to seek contribution is determined by the law applicable to such institution. The existence and exercise of the action for contribution are governed by the two preceding paragraphs.

#### Article 145

II. Transfer of  
rights  
1. Assignment  
by contract

<sup>1</sup> The assignment of a right by contract is governed by the law chosen by the parties or, failing such choice, by the law applicable to the assigned right; a choice made by the assignor and the assignee may not be asserted against the obligor without the latter's assent.

<sup>2</sup> A choice of law relating to the assignment of an employee's right is valid only to the extent that Article 121, paragraph 3, relating to employment contracts, allows it.

<sup>3</sup> The validity as to form of an assignment is governed exclusively by the law applicable to the assignment contract.

<sup>4</sup> Issues concerning exclusively the relationship between the assignor and the assignee are governed by the law applicable to the legal relationship underlying the assignment.

#### Article 146

2. Assignment  
by operation of  
law

<sup>1</sup> An assignment by operation of law is governed by the law applicable to the original relationship between the former and the new obligee and, failing such a relationship, by the law governing the right.

<sup>2</sup> The above provision does not affect those rules in the law governing the rights that are intended to protect the obligor.

#### Article 147

III. Currency

<sup>1</sup> A currency is defined by the law of the state issuing it.

<sup>2</sup> The effects of a currency on the extent of an obligation are governed by the law applicable to such obligation.

<sup>3</sup> The law of the state in which payment must be made determines in which currency such payment must be made.

#### Article 148

IV. Statute of  
limitations and  
extinction of  
rights

<sup>1</sup> The law applicable to a right governs the statute of limitations and the extinction of such right.

<sup>2</sup> In the event of extinction by set-off, the applicable law is that governing the right against which set-off is asserted.

<sup>3</sup> Novation, release and set-off agreements are governed by the provisions of this Act relating to the law applicable to contracts (Art. 116 *et seq.*).

*Section 5: Foreign decisions*

**Article 149**

<sup>1</sup> Foreign decisions relating to a right pertaining to the law of obligations shall be recognized in Switzerland:

- a. if they were rendered in the state of the defendant's domicile; or
- b. if they were rendered in the state of the defendant's habitual residence, insofar as the rights relate to an activity carried out in such state.

<sup>2</sup> They shall also be recognized:

- a. if the decision pertains 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 the decision pertains to a claim relating to a contract made with a consumer, was rendered at the consumer's domicile or habitual residence, and the requirements provided in Article 120, paragraph 1, are met;
- c. if the decision pertains to a claim under an employment contract and was rendered either at the place of the enterprise or at the place of work, and the employee was not domiciled in Switzerland;
- d. if the decision pertains to a claim arising out of the operation of a place of business and was rendered at the location of such place of business;
- e. if the decision pertains to unjust enrichment, was rendered at the place where the act or result occurred, and the defendant was not domiciled in Switzerland; or
- f. if the decision pertains to an obligation in tort, was rendered at the place where the act or the result occurred, and the defendant was not domiciled in Switzerland.

**Chapitre 9a: Trusts**

**Article 149a**

- I. Definition Trusts are trusts created voluntarily as defined in the Hague Convention of 1st July 1985 on the Law Applicable to Trusts and on their Recognition, irrespective of whether they are evidenced in writing pursuant to Article 3 of the Convention.

**Article 149b**

- II. Jurisdiction <sup>1</sup> In matters concerning the trust law, the choice of forum contained in the trust deed shall prevail. The choice of forum or the authorisation to choose the forum contained in the trust deed may only be taken into consideration if it is made in writing or in any other form which permits it to be evidenced by a text. Unless otherwise provided, a choice of forum is exclusive. Article 5, paragraph 2, shall apply by analogy.

<sup>2</sup> The chosen court may not deny jurisdiction:

- a. if one of the parties, the trust or one of the trustees is domiciled, habitually resident or has a place of business in the canton where the court is located, or
- b. if a major share of the assets of the trust are located in Switzerland.

<sup>3</sup> Where there is no valid choice of forum, or if the choice of forum is not exclusive, jurisdiction shall lie with the Swiss courts:

- a. at the domicile or, in the absence of a domicile, at the habitual residence of the defendant;
- b. at the registered office of the trust; or

c. for claims arising out of the operations of a place of business in Switzerland, at such place of business.

<sup>4</sup> Disputes regarding liability arising out of the public issue of equity and other securities may also be brought before the Swiss courts at the place of issue. This jurisdiction may not be excluded by a choice of forum.

#### **Article 149c**

III. Applicable law

<sup>1</sup> The law applicable to trusts is governed by the Hague Convention of 1st July 1985 on the Law Applicable to Trusts and on their Recognition.

<sup>2</sup> The law designated by the Convention shall also apply when the Convention does not apply pursuant to its Article 5 or when a state is not bound to recognise a trust under its Article 13.

#### **Article 149d**

IV. Special rules concerning publicity

<sup>1</sup> Where the assets of the trust are registered in the name of the trustee in the land register, the ships register or the aircraft register, reference to a trust can be made by adding an annotation.

<sup>2</sup> The relation with a trust relating to intellectual property rights registered in Switzerland shall be registered on request in the relevant register.

<sup>3</sup> The relation with a trust that is not annotated or registered in the register is not enforceable against *bona fide* third parties.

#### **Article 149e**

V. Foreign decisions

<sup>1</sup> Foreign decisions in matters regarding a trust shall be recognised in Switzerland:

- a. if they were rendered by a court that was validly designated pursuant to Article 149b, paragraph 1;
- b. if they were rendered in the state in which the defendant was domiciled, habitually resident or had a place of business;
- c. if they were rendered in the state in which the trust has its registered office;
- d. if they were rendered in the state whose law applies to the trust; or
- e. if they are recognised in the state in which the trust has its registered office, provided the defendant was not domiciled in Switzerland.

<sup>2</sup> Article 165, paragraph 2, shall apply by analogy to foreign decisions relating to claims regarding public issues of equity or other securities based on prospectuses, circulars or similar publications.

## **Chapitre 10: Companies**

### **Article 150**

I. Definitions

<sup>1</sup> For the purposes of this Act, a company is any organized association of persons and any organized unit of assets.

<sup>2</sup> Simple partnerships without any organization are governed by the provisions of this Act relating to the law applicable to contracts (Art. 116 *et seq.*).

### **Article 151**

II. Jurisdiction  
1. Principle

<sup>1</sup> In matters concerning company law, Swiss courts at the registered office of the company have jurisdiction to entertain actions against the company, its shareholders or

members, or persons liable under company law.

<sup>2</sup> Swiss courts at the domicile or, failing a domicile, at the habitual residence of the defendant also have jurisdiction to entertain actions against the shareholders or members of the company, or persons liable under company law.

<sup>3</sup> Notwithstanding a choice of forum, Swiss courts at the place of a public issue also have jurisdiction for disputes concerning liability for public issues of equity and other securities.

<sup>4</sup> Swiss courts at the registered office of the company involved have jurisdiction to entertain actions concerning the suspension of the voting rights pursuant to the Law of 24 March 1995 on the Stock Exchange and Securities Trading.

### Article 152

2. Liability for a foreign company

The following courts have jurisdiction to entertain actions against a person liable under Article 159 or against the foreign company for which such person is acting:

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

### Article 153

3. Protective measures

The Swiss judicial or administrative authorities at the place where the assets are located have jurisdiction over measures intended to protect the assets in Switzerland that belong to a company which registered office is abroad.

### Article 154

III. Applicable law  
1. Principle

<sup>1</sup> Companies are governed by the law of the state under which they are organized, provided they fulfil the publicity or registration requirements of this law or, where such requirements do not exist, if they are organized under the law of this state.

<sup>2</sup> A company which does not fulfil these requirements is governed by the law of the state in which it is in fact managed.

### Article 155

2. Scope of the applicable law

Subject to Articles 156 to 161, the law applicable to a company governs in particular:

- a. the legal nature of the company;
- b. its establishment and dissolution;
- c. its legal capacity and capacity to act;
- d. its name or business designation;
- e. its organization;
- f. the internal relationships, including the relationships between the company and its members;
- g. liability for the violation of company law;
- h. liability for the debts of the company;
- i. the power of representation of the persons acting on behalf of the company, according to its organization.

### Article 156

IV. Special connecting factors  
1. Claims arising out of

Claims regarding public issues of equity or other debt securities based on prospectuses, circulars or similar publications are governed either by the law applicable to the company or the law of the state where the instruments were issued.



public issues of  
equity or debt  
securities

### Article 157

2. Protection of  
the name and  
business  
designation

<sup>1</sup> The protection of the name or business designation of companies registered in the Swiss commercial register against infringements taking place in Switzerland is governed by Swiss law.

<sup>2</sup> The protection of the name or business designation of a company which is not registered in the Swiss commercial register is governed by the law applicable to unfair competition (Art. 136) or to infringements of personal rights (Art. 132, 133 and 139).

### Article 158

3. Restrictions  
of the power of  
representation

A company cannot invoke restrictions of the power of representation of a body or a representative which are unknown in the law of the state where the other party has its place of business or habitual residence, unless such other party knew or should have known these restrictions.

### Article 159

4. Liability for  
a foreign  
company

When the operations of a company established under a foreign law are managed in or from Switzerland, the liability of the persons acting on behalf of such company is governed by Swiss law.

### Article 160

V. Branches of  
foreign  
companies in  
Switzerland

<sup>1</sup> A company with its registered office in a foreign state may have a branch in Switzerland. Such branch is governed by Swiss law.

<sup>2</sup> Swiss law governs the power of representation of such branch. At least one of the persons authorized to represent the branch must be domiciled in Switzerland and registered in the Swiss commercial register.

<sup>3</sup> The Federal Council adopts the regulation concerning mandatory registration in the commercial register.

### Article 161

VI. Transfer,  
merger,  
division and  
transfer of  
assets and  
liabilities  
1. Transfer of a  
company from  
abroad to  
Switzerland  
a. Principle

<sup>1</sup> A foreign company may subject itself to Swiss law without going into a liquidation and a re-establishment, provided this is allowed under the foreign law governing the company. Such company must meet the requirements of its foreign law and must be able to adapt itself to one of the forms of organization of Swiss law.

<sup>2</sup> The Federal Council may authorise a company to subject itself to Swiss law even where the requirements of its foreign law are not met, particularly if significant Swiss interests are at stake.

### Article 162

b. Relevant  
time

<sup>1</sup> A company that is required under Swiss law to register in the commercial register is governed by Swiss law as soon as it proves that the center of its business activities has been transferred to Switzerland and that it has adapted itself to one of the forms of organization of Swiss law.

<sup>2</sup> A company that is not required under Swiss law to register in the commercial register is governed by Swiss law as soon as its intent to be governed by Swiss law appears clearly, it has a sufficient connection with Switzerland, and it has adapted itself to one

of the forms of organization of Swiss law.

<sup>3</sup> Before its registration in the commercial register, a company with a share capital must prove that its capital is covered according to Swiss law, by producing a report issued by a chartered auditor within the meaning of the Law of 16 December 2005 on the Audit Supervision.

### Article 163

2. Transfer of a company from Switzerland abroad

<sup>1</sup> A Swiss company may subject itself to a foreign law without going into a liquidation and a re-establishment, provided it meets the requirements of Swiss law and continues to exist under the foreign law.

<sup>2</sup> The creditors must be invited to file their claims by public notification announcing the forthcoming change of the legal status of the company. Article 46 of the Merger Law of 3 October 2003 applies by analogy.

<sup>3</sup> The provisions relating to protective measures in the event of international conflicts within the meaning of Article 61 of the Law of 8 October 1982 on National Economic Supply are reserved.

### Article 163a

3. Merger  
a. Merger from abroad to Switzerland

<sup>1</sup> A Swiss company may acquire a foreign company (absorption by immigration) or form together with a foreign company a new Swiss company (combination by immigration), provided the law governing the foreign company permits such a merger and all the requirements of such law are met.

<sup>2</sup> All other aspects of the merger are governed by Swiss Law.

### Article 163b

b. Merger from Switzerland abroad

<sup>1</sup> A foreign company may acquire a Swiss company (absorption by emigration) or form together with a Swiss company a new foreign company (combination by emigration), provided the Swiss company can prove that:

- a. all of its assets and liabilities will be transferred to the foreign company with the merger; and
- b. the equity and membership rights will be adequately maintained in the foreign company.

<sup>2</sup> The Swiss company must comply with all provisions of Swiss law applicable to the transferring company.

<sup>3</sup> The creditors must be invited to file their claims by public notification announcing the forthcoming merger. Article 46 of the Merger Law of 3 October 2003 applies by analogy.

<sup>4</sup> All other aspects of the merger are governed by the law applicable to the foreign acquiring company.

### Article 163c

c. Merger agreement

<sup>1</sup> The merger agreement must comply with the mandatory company law provisions of the laws governing the involved companies, including the provisions concerning form.

<sup>2</sup> All other aspects of the merger agreement are governed by the law chosen by the parties. In the absence of a choice of law, the merger agreement is governed by the law of the state with which the agreement has the closest connection. Such a connection is presumed to exist with the state whose law governs the acquiring company.

### Article 163d

4. Division and transfer of assets and liabilities

<sup>1</sup> The provisions of this Act relating to mergers of companies apply by analogy to divisions of companies and to transfers of assets and liabilities involving a Swiss company and a foreign company. Article 163*b*, paragraph 3, does not apply to the transfer of assets and liabilities.

<sup>2</sup> All other aspects of divisions and transfers of assets and liabilities are governed by the law applicable to the company being divided or to the company transferring its assets and liabilities to another legal entity.

<sup>3</sup> The law governing the company being divided is presumed to apply to the division agreement if the requirements of Article 163*c*, paragraph 2, are met. These rules apply by analogy to the transfer of assets and liabilities agreement.

#### **Article 164**

5. Common provisions  
a. Deregistration from the commercial register

<sup>1</sup> The registration of a company in the Swiss commercial register may be cancelled only if a report drawn up by a chartered auditor confirms that the claims of the creditors have either been secured or satisfied in accordance with Article 46 of the Merger Law of 3 October 2003, or that the creditors have agreed to the cancellation of the registration.

<sup>2</sup> When a foreign company acquires a Swiss company, or if it forms together with a Swiss company a new foreign company, or when the assets of a Swiss company are divided among several foreign companies, it is also required:

- a. to prove that the merger or division has become legally valid pursuant to the law applicable to the foreign company; and
- b. that a chartered auditor confirms that the foreign company has granted to the shareholders or members of the Swiss company the equity or membership rights to which they are entitled, or that the company has made or secured compensatory payments in their favour.

#### **Article 164a**

b. Place of debt enforcement and place of jurisdiction

<sup>1</sup> When a foreign company acquires a Swiss company or forms together with a Swiss company a new foreign company, or when the assets of a Swiss company are divided among several foreign companies, an action requesting the examination of the equity or membership rights pursuant to Article 105 of the Merger Act of 3 October 2003 may also be brought before the courts of the Swiss registered office of the transferring company.

<sup>2</sup> The place of debt enforcement and the place of jurisdiction in Switzerland remain valid for so long as the creditors and the shareholders have not been satisfied or their claims secured.

#### **Article 164b**

c. Transfer, merger, division and transfer of assets and liabilities abroad

A submission of a foreign company to another foreign law, as well as a merger, a division or a transfer of assets and liabilities between foreign companies, shall be recognized in Switzerland, provided it is legally valid pursuant to the foreign laws concerned.

#### **Article 165**

VII. Foreign decisions

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

- a. if they were rendered or are recognized in the state of the registered office of the company, provided the defendant was not domiciled in Switzerland; or

- b. if they were rendered in the state of the defendant's domicile or habitual residence.
- <sup>2</sup> Foreign decisions relating to claims concerning public issues of equity or debt securities based on prospectuses, circulars or similar publications shall be recognized in Switzerland if they were rendered in the state in which the equity or debt securities were issued, provided the defendant was not domiciled in Switzerland.

## Chapitre 11: Bankruptcy and Composition

### Article 166

- I. Recognition
- <sup>1</sup> A foreign bankruptcy decree shall be recognized in Switzerland on application of the trustee in bankruptcy, the debtor or a creditor:
- a. if the decree is enforceable in the state where it was rendered;
  - b. if there is no ground to deny recognition within the meaning of Article 27; and
  - c. if the decree was rendered:
    1. in the state of the domicile of the debtor, or
    2. in the state where the centre of the debtor's main interests is situated, if the latter was not domiciled in Switzerland at the time when the foreign bankruptcy proceedings were opened.
- <sup>2</sup> If the debtor has a branch in Switzerland, the procedure provided for in Article 50, paragraph 1, of the Federal Act on Debt Collection and Bankruptcy of 11 April 1889 (DEBA) may be followed until such time as the decision on the recognition has been published according to Article 169 of this Act.
- <sup>3</sup> If a procedure within the meaning of Article 50, paragraph 1, DEBA has already been opened and the time limit provided for in Article 250 DEBA has not yet elapsed, the procedure is stayed after the foreign bankruptcy decree has been recognized. The claims that have been presented are admitted to the schedule of debts of the ancillary bankruptcy proceeding as provided for in Article 172. The cost of procedure are deferred to the ancillary bankruptcy proceeding.

### Article 167

- II. Procedure
1. Jurisdiction
- <sup>1</sup> If the debtor has a branch in Switzerland that is registered in the commercial register, the petition for recognition of the bankruptcy decree rendered in a foreign country must be brought before the court of the place where the branch has its seat. In all other cases, the petition must be brought before the court at the place where the assets are situated in Switzerland. Article 29 applies by analogy.
- <sup>2</sup> If the debtor has more than one branch or if there are assets in more than one place, the court before which a petition was first brought has exclusive jurisdiction.

### Article 168

2. Conservatory measures
- As from the filing of the petition for recognition of the bankruptcy decree rendered in a foreign country, the court may, on application of the petitioner, order conservatory measures as provided in Articles 162 to 165 and 170 DEBA.

### Article 169

3. Publication
- <sup>1</sup> The decision granting recognition to a bankruptcy declared in a foreign country shall be published.
- <sup>2</sup> Such decision shall be communicated to the Debt Collection and Bankruptcy Office, to the commissioner of the Land Register, to the head of the Commercial Register at the

place where the assets are located and, where appropriate, to the Federal Office for Intellectual Property. The same applies to the decisions closing or staying the ancillary bankruptcy proceedings, the decision to revoke the bankruptcy, as well as the waiver of the procedure relating to the ancillary bankruptcy.

### Article 170

III. Legal effects  
1. In general

<sup>1</sup> Unless otherwise provided in this Act, the recognition of a bankruptcy decree rendered in a foreign country has the same effect for the debtor's estate located in Switzerland as provided for a bankruptcy under Swiss law.

<sup>2</sup> The time limits set forth by Swiss law start to run as from the publication of the decision granting recognition.

<sup>3</sup> The bankruptcy is conducted through summary liquidation, except in case the foreign trustee in bankruptcy or a creditor within the meaning of Article 172, paragraph 1, requests the Bankruptcy Office that the liquidation may be done in the ordinary way, provided that such request is made before the distribution of the assets and together with sufficient surety for the costs that will probably not be covered.

### Article 171

2. Action to set aside an undue preference

<sup>1</sup> The action to set aside an undue preference is governed by Articles 285 to 292 DEBA. Such action may also be initiated by the foreign trustee in bankruptcy or by one of the creditors entitled to bring such action.

<sup>2</sup> The opening of the bankruptcy abroad determines the calculation of time limits set forth in Articles 285 to 288a and 292 DEBA.

### Article 172

3. Admission and ranking of debts

<sup>1</sup> The schedule of debts shall only include:

- a. the secured creditors defined in Article 219 DEBA;
- b. the unsecured but privileged creditors who have their domicile in Switzerland; and
- c. the claims related to obligations taken into account by a branch of the debtor that is registered in the commercial register.

<sup>2</sup> Only those creditors mentioned in paragraph 1 and the foreign trustee in bankruptcy may bring an action to challenge the schedule of debts as provided in Article 250 DEBA.

### Article 173

4. Distribution  
a. Recognition of the foreign schedule of debts

<sup>1</sup> After distribution of the proceeds within the meaning of Article 172, paragraph 1, any balance shall be remitted to the foreign bankruptcy estate or to those creditors that are entitled to it.

<sup>2</sup> Such balance may only be remitted after recognition of the foreign schedule of debts.

<sup>3</sup> The Swiss court having jurisdiction for the recognition of the foreign bankruptcy decree also has jurisdiction for the recognition of the foreign schedule of debts. Such court shall review in particular whether the creditors domiciled in Switzerland have been included fairly in the foreign schedule of debts. Such creditors shall be granted an opportunity to be heard.

### Article 174

b. Non-recognition of a foreign schedule of

<sup>1</sup> When a foreign schedule of debts may not be recognized, the balance is distributed among the creditors of the third category according to Article 219, paragraph 4, DEBA, provided they are domiciled in Switzerland.

debts                   <sup>2</sup> The same applies when the schedule of debts is not filed for recognition within the time-limit set by the court.

#### **Article 174a**

5. Waiver of the conduct of an ancillary bankruptcy proceeding                   <sup>1</sup> Upon request of the foreign trustee in bankruptcy the conduct of an ancillary bankruptcy proceeding can be waived if no claim within the meaning of Article 172, paragraph 1, has been raised.

<sup>2</sup> If creditors domiciled in Switzerland raise claims others than those referred to in Article 172, paragraph 1, the court may waive the procedure on ancillary bankruptcy if the foreign proceeding takes adequately account of their claims. The creditors concerned shall be granted an opportunity to be heard.

<sup>3</sup> The court may subordinate the waiver to conditions and charges.

<sup>4</sup> If the court has waived the procedure on ancillary bankruptcy, the foreign trustee in bankruptcy may, within the limits set by Swiss law, exercise all the powers invested to him by the law of the state where the bankruptcy is open; the trustee may in particular transfer goods abroad or introduce proceedings. Such powers do not comprise the carrying out of sovereign acts, the use of means of force or the the right to dispute resolution.

#### **Article 174b**

III<sup>bis</sup>. Coordination                   In case proceedings are connected in respect of their subject matter, the authorities involved and their organs may coordinate their actions between themselves and with foreign authorities and organs.

#### **Article 174c**

III<sup>ter</sup>. Recognition of foreign decisions on claims for challenge and similar decisions                   Foreign decisions on claims for challenge and other acts detrimental to creditors that stay in close connection to a bankruptcy decree recognized in Switzerland are recognized by virtue of Articles 25 to 27 if they have been rendered or are recognized in the state of origin of the bankruptcy decree, and if the defendant was not domiciled in Switzerland.

#### **Article 175**

IV. Composition and similar proceedings. Recognition                   A composition or a similar proceeding approved by a foreign authority shall be recognized in Switzerland. Articles 166 to 170 and 174a to 174c apply by analogy. Creditors domiciled in Switzerland shall be granted an opportunity to be heard.

### **Chapitre 12: International Arbitration**

#### **Article 176**

I. Scope of application. Seat of the arbitral tribunal                   <sup>1</sup> The provisions of this chapter apply to any arbitration if the seat of the arbitral tribunal is in Switzerland and if, at the time when the arbitration agreement was entered into, at least one of the parties had neither its domicile nor its habitual residence in Switzerland.

<sup>2</sup> The parties may exclude the application of this chapter and agree to the application of the third part of the CCP by an express statement in the arbitration agreement or in a subsequent agreement.

<sup>3</sup> The seat of the arbitral tribunal is determined by the parties, or the arbitration institution designated by them, or, failing both, by the arbitrators.

### Article 177

II. Arbitrability <sup>1</sup> Any dispute involving an economic interest may be the subject-matter of an arbitration.

<sup>2</sup> If a party to the arbitration agreement is a state or an enterprise or organization controlled by it, it cannot rely on its own law in order to contest its capacity to be a party to an arbitration or the arbitrability of a dispute covered by the arbitration agreement.

### Article 178

III. Arbitration agreement <sup>1</sup> As regards its form, an arbitration agreement is valid if made in writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text.

<sup>2</sup> As regards its substance, an arbitration agreement is valid if it conforms either to the law chosen by the parties, or to the law governing the subject-matter of the dispute, in particular the law governing the main contract, or if it conforms to Swiss law.

<sup>3</sup> The validity of an arbitration agreement cannot be contested on the ground that the main contract may not be valid or that the arbitration agreement concerns a dispute which has not yet arisen.

### Article 179

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

1. Constitution

<sup>2</sup> In the absence of such an agreement, the matter may be referred to the court where the arbitral tribunal has its seat; the court shall apply by analogy the provisions of the CCP concerning the appointment, removal or replacement of arbitrators.

<sup>3</sup> Where a court is called upon to appoint an arbitrator, it shall make the appointment, unless a summary examination shows that no arbitration agreement exists between the parties.

### Article 180

2. Challenge of arbitrators <sup>1</sup> An arbitrator may be challenged:

- a. if he or she does not meet the requirements agreed by the parties;
- b. if the arbitration rules agreed by the parties provide a ground for challenge; or
- c. if circumstances exist that give rise to justifiable doubts as to his or her independence.

<sup>2</sup> A party may challenge an arbitrator whom it has appointed or in whose appointment it has participated only on grounds of which it became aware after such appointment. The ground for challenge must be notified to the arbitral tribunal and to the other party without delay.

<sup>3</sup> In the event of a dispute and to the extent that the parties have not determined the procedure for the challenge, the court having jurisdiction at the seat of the arbitral tribunal shall make the final decision.

### Article 181

V. Lis pendens The arbitral proceeding is pending as of the time when one of the parties submits its request to the arbitrator or arbitrators designated in the arbitration agreement or, in the

absence of such designation, from the time when one of the parties initiates the procedure for the constitution of the arbitral tribunal.

### Article 182

VI. Procedure  
1. Principle

<sup>1</sup> The parties may, directly or by reference to arbitration rules, determine the arbitral procedure; they may also submit it to a procedural law of their choice.

<sup>2</sup> Where the parties have not determined the procedure, the arbitral tribunal shall determine it to the extent necessary, either directly or by reference to a law or to arbitration rules.

<sup>3</sup> Whatever procedure is chosen, the arbitral tribunal shall ensure equal treatment of the parties and their right to be heard in an adversary procedure.

### Article 183

2. Interim relief  
and  
conservatory  
measures

<sup>1</sup> Unless the parties have agreed otherwise, the arbitral tribunal may, at the request of a party, grant interim relief and conservatory measures.

<sup>2</sup> If the party so ordered does not comply therewith voluntarily, the arbitral tribunal may request the assistance of the competent court. Such court shall apply its own law.

<sup>3</sup> The arbitral tribunal or the court may make the granting of interim relief or conservatory measures subject to the provision of appropriate security.

### Article 184

3. Taking of  
evidence

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

<sup>2</sup> Where the assistance of state authorities is needed for taking evidence, the arbitral tribunal or a party with the consent of the arbitral tribunal may request the assistance of the court at the seat of the arbitral tribunal; such court shall apply its own law.

### Article 185

4. Other  
judicial  
assistance

For any further judicial assistance the court at the seat of the arbitral tribunal has jurisdiction.

### Article 186

VII. Juris-  
diction

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

<sup>1bis</sup> It shall decide on its jurisdiction without regard to an action having the same subject matter already pending between the same parties before a state court or another arbitral tribunal, unless serious reasons require to stay the proceedings.

<sup>2</sup> Any objection to its jurisdiction must be raised prior to any defense on the merits.

<sup>3</sup> The arbitral tribunal shall, in general, decide on its jurisdiction by a preliminary decision.

### Article 187

VIII. Decision  
on the merits  
1. Applicable  
law

<sup>1</sup> The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection.

<sup>2</sup> The parties may authorize the arbitral tribunal to decide *ex aequo et bono*.

### Article 188

2. Partial award

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



### Article 189

3. Arbitral award

<sup>1</sup> The arbitral award shall be made in conformity with the procedure and form agreed by the parties.

<sup>2</sup> In the absence of such an agreement, the award shall be made by a majority decision or, in the absence of a majority, by the presiding arbitrator alone. It shall be in writing, reasoned, dated and signed. The signature of the presiding arbitrator is sufficient.

### Article 190

IX. Finality.  
Setting aside  
1. Principle

<sup>1</sup> The award is final from the time when it is communicated.

<sup>2</sup> Proceedings for setting aside the award may only be initiated:

- a. where the sole arbitrator has been improperly appointed or where the arbitral tribunal has been improperly constituted;
- b. where the arbitral tribunal has wrongly accepted or denied jurisdiction;
- c. where the arbitral tribunal has ruled beyond the claims submitted to it, or failed to decide one of the claims;
- d. where the principle of equal treatment of the parties or their right to be heard in an adversary procedure has not been observed;
- e. where the award is incompatible with public policy.

<sup>3</sup> As regards preliminary decisions, setting aside proceedings can only be initiated on the grounds of the above paragraphs 2(a) and 2(b); the time-limit runs from the communication of the decision.

### Article 191

2. Competent court

Setting aside proceedings may only be brought before the Federal Supreme Court. The procedure is governed by Article 77 of the Law of 17 June 2005 on the Federal Supreme Court.

### Article 192

X. Exclusion agreements

<sup>1</sup> Where none of the parties has its domicile, its habitual residence, or a place of business in Switzerland, they may, by an express statement in the arbitration agreement or in a subsequent agreement in writing, exclude all setting aside proceedings, or they may limit such proceedings to one or several of the grounds listed in Article 190, paragraph 2.

<sup>2</sup> Where the parties have excluded all setting aside proceedings and where the awards are to be enforced in Switzerland, the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards applies by analogy.

### Article 193

XI. Deposit and certificate of enforceability

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

<sup>2</sup> At the request of a party, that court shall certify the enforceability of the award.

<sup>3</sup> At the request of a party, the arbitral tribunal shall certify that the award has been made in conformity with the provisions of this Act; such certificate has the same effect as the deposit of the award.

### Article 194

XII. Foreign

The recognition and enforcement of foreign arbitral awards is governed by the New

arbitral awards    York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

## Chapitre 13: Final Provisions

### *Section 1:    Abrogation and amendment of the law currently in force*

#### **Article 195**

The abrogations and amendments to the law currently in force appear in the Appendix, which is part of this Act.

### *Section 2:    Transitory provisions*

#### **Article 196**

I. Non-retroactivity

<sup>1</sup> Facts and legal acts which came into being and produced all their effects before the entry into force of this Act are governed by the law previously in force.

<sup>2</sup> Facts and legal acts which came into being before the entry into force of this Act, but which continue to produce legal effects, are governed by the law previously in force for the period prior to that date. As regards their effects, they are governed by this Act for the period after that date.

#### **Article 197**

II. Transitory provisions  
1. Jurisdiction

<sup>1</sup> The Swiss courts or administrative authorities, validly seized of actions or applications made before the entry into force of this Act, continue to have jurisdiction even if this is no longer the case under this Act.

<sup>2</sup> It is possible to bring again, after the entry into force of this Act, actions or applications dismissed for lack of jurisdiction by the Swiss courts or administrative authorities before that date if the jurisdiction of a Swiss court or authority is provided for in this Act and the claim may still be asserted.

#### **Article 198**

2. Applicable law

This Act determines the law to be applied to actions and applications pending at first instance on the date of its entry into force.

#### **Article 199**

3. Recognition and enforcement

Applications for the recognition or enforcement of foreign decisions, pending on the date of entry into force of this Act, are governed by this Act as regards the conditions for recognition and enforcement.

### *Section 3:    Referendum and effective date*

#### **Article 200**

<sup>1</sup> This Act is subject to a possible referendum.

<sup>2</sup> The Federal Council shall set the effective date of this Act.

<b>Appendix 1</b>	<i>omitted</i>	Abrogations and amendments of laws currently in force
<b>Appendix 2</b>	<i>omitted</i>	Hague Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary