

LAWBRARY

Law text

Search

ZPO

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Code (Civil Procedure Code, CPC)

- Chapter 4
Decision Proposal
and Decision
(210 - 212)

Title 2 Mediation
(213 - 218)

Title 3 Ordinary Proceedings

- Chapter 1 Scope
of Application
(219 - 219)

- Chapter 2
Exchange of
Written
Submissions and
Preparation for
the Main Hearing
(220 - 227)

Older versions

• Jan. 1, 2025 -
version
2025.01

• Sept. 1, 2023 -
version
2023.09

• Jan. 1, 2023 -
version
2023.01

• July 1, 2022 -
version
2022.07

• Jan. 1, 2022 -
version
2022.01

• Jan. 1, 2021 -
version
2021.01

• July 1, 2020 -
version
2020.07

• Jan. 1, 2018 -
version
2018.01

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Code, CPC)

The Federal Assembly of the Swiss
Confederation,
based on Article 122 paragraph 1 of the
Federal Constitution¹,
and having considered the Federal Council
Dispatch of 28 June 2006²,
decrees:

Part 1 General Provisions

Title 1 Subject Matter and Scope of Application

Art. 1 Subject matter

This Code governs the proceedings before
the cantonal authorities for:

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 3 Organisation of the courts and the
conciliation authorities

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

Title 2 Jurisdiction of the Courts and Recusal

Chapter 1 Material Jurisdiction and Functional Jurisdiction

Art. 4 Principles

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

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

LAWBRARY

Law text

☐

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

such property rights, including disputes concerning the nullity, ownership, licensing, transfer and violation of such rights;

- b. cartel law disputes;
- c. disputes on the use of a business name;
- d. disputes under the Unfair Competition Act of 19 December 1986⁴ if the value in dispute exceeds 30,000 francs or if the Confederation exercises its right to file an action;
- e.⁵ disputes under the Nuclear Energy Public Liability Act of 13 June 2008⁶;
- f.⁷ actions against the Confederation, provided the value in dispute exceeds CHF 30,000;
- f. claims against the Confederation;
- g.⁸ disputes relating to the instigation and conduct of a special investigation in accordance with Articles 697697^{bis} of the Code of Obligations (CO)⁹;
- h.¹⁰ disputes under the Collective Investment Schemes Act of 23 June 2006¹¹, the Financial Market Infrastructure Act of 19 June 2015¹² and the Financial Institutions Act of 15 June 2018¹³;
- i.¹⁴ disputes under the Coat of Arms Protection Act of 21 June 2013¹⁵, the Federal Act of 25 March 1954¹⁶ on the Protection of the Emblem and Name of the Red Cross and the Federal Act of 15 December 1961¹⁷ on the Protection of the Names and Emblems of the United Nations Organization and other Intergovernmental Organisations.

LAWBRARY

Law text

☐

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

² A dispute is considered commercial, if:

- a. it concerns the commercial activity of at least one party;
- b. ¹⁸the value in dispute exceeds CHF 30,000 or the dispute is not a property dispute;
- c. ¹⁹the parties are registered as legal entities in the Swiss Commercial Register or in an equivalent foreign register; and
- d. ²⁰it is not a dispute arising from a employment relationship, under the Recruitment Act of 6 October 1989²¹, under the Gender Equality Act of 24 March 1995²², or relating to the renting or leasing of residential and commercial premises or to agricultural leases.

³ If only the defendant is registered as a legal entity in the Swiss Commercial Register or in an equivalent foreign register, but all the other conditions are met, the plaintiff may choose between the commercial court and the ordinary court.²³

⁴ The cantons may also assign to the commercial court:

- a. the disputes mentioned in Article 5 paragraph 1;
- b. the disputes relating to the law of commercial companies and cooperatives;
- c. ²⁴disputes in which all the following conditions are met:
 1. The dispute concerns the business activities of at least one party.
 2. The value in dispute is at least

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

gistered office abroad.

⁵ The commercial court is also competent to order interim measures before an action is pending.

⁶ If actions concern joint parties that are not all registered as legal entities in the Swiss Commercial Register or in a comparable foreign register, the commercial court shall only have jurisdiction if all actions fall within its jurisdiction.²⁵

Art. Disputes concerning insurance
7 supplementary to social health insurance

The cantons may designate a court that has jurisdiction as sole cantonal instance for disputes relating to insurance supplementary to social health insurance under the Federal Act of 18 March 1994²⁶ on Health Insurance.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

² This court decides as the sole cantonal instance. It is also responsible for ordering interim measures before an action becomes pending.²⁷

Feedback

Chapter 2 Territorial Jurisdiction

Section 1 General Provisions

Art. 9 Mandatory jurisdiction

¹ A place of jurisdiction is mandatory only if the law expressly so provides.

² Parties may not derogate from a mandatory place of jurisdiction.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

b. for actions against legal entities, public corporations and institutions as well as general partnerships and limited partnerships: the court at the location of their registered office;

c. ²⁸for actions against the Confederation: the court in the City of Bern or the court where the plaintiff's domicile, registered office or habitual residence is located;

c. for actions against the Confederation: the Supreme Court of the Canton of Bern or the supreme court of the canton where the plaintiff's domicile, registered office or habitual residence is located;

d. for actions against a canton: a court in the canton's capital.

² Domicile is determined in accordance with the Civil Code (CC)²⁹. Article 24 CC does not apply.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

person lives for a certain period of time, even if that period is limited from the outset.

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

Feedback

Art. 12 Establishment

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

Art. 13 Interim measures

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

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

Feedback

Art. 15 Joinder of parties and joinder of actions

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

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

Art. 16 Third party action

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Unless the agreement provides otherwise, the action may only be brought before agreed court.

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

Feedback

Art. 18 Acceptance by appearance

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

Art. 19 Non-contentious matters

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

Section 2 Law of Persons

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

- a. actions based on an invasion of the personal privacy;
- b. requests for a right of reply;
- c. actions for name protection and actions challenging a name change;
- d. ³⁰actions and requests under the Data Protection Act of 25 September 2020³¹ (FADP).

Art. 21 Declaration of death and
declaration of presumed death

The court at the last known domicile of the missing person has mandatory jurisdiction over applications relating to a declaration of death or declaration of presumed death (Art. 34 to 38 CC³²).

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

or should have been made has mandatory jurisdiction.

Feedback

Section 3 Family Law

Art. 23 Applications and actions based on marital law

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

interim measures.

Feedback

Art. 25 Actions relating to parent-child relationships

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

Art. 26 Actions for maintenance and assistance

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Section 4 Law of Succession

Art. 28

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

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

or should be recorded in the land register

has jurisdiction to decide on:

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

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

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

at the place where the item is located has jurisdiction.

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

Section 6 Actions in Contract

Art. 31 Principle

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

b. for actions brought by the supplier:
the court at the domicile of the defendant.

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

Art. 33 Tenancy and lease of immovable property

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

employment law.

² If a job applicant or an employee brings an action based on the Recruitment Act of 6 October 1989³³, the court at the place of the business establishment of the recruitment or hiring agent with whom the contract was concluded also has jurisdiction.

Art. 35 Waiver of statutory jurisdiction

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

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

² The conclusion of an agreement on jurisdiction after the emergence of the dispute is reserved.

Section 7 Actions in Tort

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. Damages for unjustified interim
37 measures

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

Art. Motor vehicle and bicycle
38 accidents

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

² Actions against the Swiss National Bureau of Insurance (Art. 74 of the Road Traffic Act of 19 December 1958³⁴; RTA) or against the Swiss National Guarantee Fund (Art. 76 RTA) may also be brought before the court at the place of any branch of such institutions.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

² If there is any uncertainty as to which canton this is, the court in the canton where the nuclear installation of the liable proprietor is located has mandatory jurisdiction.

³ If two or more courts have jurisdiction in accordance with these rules, the court in the canton that is most closely linked to the incident and which is most seriously affected by it has mandatory jurisdiction.

Art. 39 Incidental civil claim

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

Section 8 Commercial Law

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

in company law.

² The court at the last registered office of the deleted legal entity has mandatory jurisdiction over the reinstatement of a deleted legal entity in the commercial register.³⁷

Feedback

Art. 41³⁸

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

The court at the registered office of one of the involved entities has jurisdiction to decide actions relating to the Mergers Act of 3 October 2003³⁹.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

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

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

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

Art. 44 Bonds

The place of jurisdiction for the authorisation to convene a creditors' meeting is governed by Article 1165 CO⁴⁰.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

community of investors.

Feedback

Section 9 Debt Enforcement and Bankruptcy Law

Art. 46

The place of jurisdiction for actions under the Federal Act of 11 April 1889⁴¹ on Debt Enforcement and Bankruptcy (DEBA) is determined by this chapter unless the DEBA provides for a place of jurisdiction.

Chapter 3 Recusal

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

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

² Involvement in the following, in particular, is in itself no reason for recusal:

- a. the decision on legal aid;
- b. the conciliation proceedings;
- c. the setting aside of an objection under Articles 80 to 84 DEBA⁴²;
- d. the ordering of interim measures;
- e. proceedings for protection of the marital union.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

siders that such reason exists.

Feedback

Art. 49 Application for recusal

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

² The judge or judicial officer concerned shall respond to the application.

Art. 50 Decision

¹ If the reason given for recusal is disputed, the court shall decide.

² An objection may be filed against the decision.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

of the reason for recusal.

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

³ If a reason for recusal is detected only after the close of the proceedings and if no other legal remedy is still available, the provisions on review apply.⁴³

Title 3 Procedural Principles and Procedural Requirements

Chapter 1 Procedural Principles

Art. 52 Acting in good faith

¹ All those who participate in proceedings must act in good faith.

² Incorrect instructions on appellate remedies are effective in relation to all courts to the extent that they are advantageous to the party invoking them.⁴⁴

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

overriding public or private interests.

³ They may comment on all submissions made by the opposing party. The court shall set them a deadline of at least ten days to do so. If the deadline expires unused, it shall be assumed that the parties do not wish to comment.⁴⁵

Art. 54 Publicity

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

² Cantonal law determines whether the deliberations are public.

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

⁴ Family law proceedings are not conducted in public.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

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

Feedback

Art. 56 Court's duty to enquire

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

Art. 57 Ex-officio application of the law

The court applies the law ex-officio.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

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

Feedback

Chapter 2 Procedural Requirements

Art. 59 Principle

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

² Procedural requirements are in particular the following:

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 61 Arbitration agreement

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

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

Title 4 Pendency and Effects of Withdrawal of the Action

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

sions shall be issued to the parties.

Feedback

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

¹ If a submission that has been withdrawn or rejected due to lack of jurisdiction is filed again with the competent conciliation authority or court within one month of withdrawal or the declaration of non-admissibility, or if it is forwarded in accordance with Article 143 paragraph 1^{bis}, the date of the first filing is deemed to be the date of pendency.⁴⁶

² The same applies if the claim was not filed under the proper procedure.

³ The special statutory deadlines for filing actions under the DEBA⁴⁷ are reserved.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

b. the territorial jurisdiction of the court is maintained.

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

Art. 65 Effects of withdrawal

Any person who withdraws an action before the competent court may not bring proceedings again against the same party on the same subject matter if the court has already served the statement of claim on the defendant and the defendant does not consent to its withdrawal.

Title 5 Parties and Participation of Third Parties

Chapter 1 Capacity to be a Party and Capacity to take Legal Action

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 67 Capacity to take legal action

¹ Any person who has the capacity to act has the capacity to take legal action.

² A person without capacity to act may act through his legal representative.

³ Provided a person without the capacity to act has the capacity to consent, he or she may:

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

Chapter 2 Representation of the Parties

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

as professional representatives:

- a. in all proceedings: lawyers admitted to represent parties before Swiss courts under the Lawyers Act of 23 June 2000⁴⁸;
- b. before the conciliation authorities, in financial disputes under the simplified procedure and in cases under the summary procedure: licensed administrators and legal agents if provided for by cantonal law;
- c. in cases under the summary procedure in accordance with Article 251 of this Code: professional representatives under Article 27 DEBA⁴⁹;
- d. before the special courts for tenancy matters and for employment matters: professionally qualified representatives if provided for by cantonal law.

³ The representative must prove his or her authority by power of attorney.

⁴ The court may order the personal appearance of a represented party.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

shall be appointed by the court.

² The court shall notify the Adult and Child Protection Authority if protective measures are deemed necessary.⁵⁰

Feedback

Chapter 3 Joinder of Parties

Art. 70 Mandatory joinder

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

² Procedural acts duly carried out by one of the joint parties are likewise effective for the others, with the exception of challenging a decision.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

all circumstances or legal grounds are to be assessed;

- b. the individual cases are not subject to different types of procedure; and
- c. the same court has material jurisdiction.

² Each of the joint parties may proceed independently from the others.

Feedback

Art. 72 Joint representation

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

Chapter 4 Third Party Intervention

Section 1 Principal Intervention

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

in the court in which the dispute is pending in first instance.

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

Feedback

Section 2 Accessory Intervention

Art. 74 Principle

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

² The court decides on the application after hearing the parties. An objection may be filed against the decision.

Feedback

Art. 76 Rights of the Intervenor

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

moment of intervention of the acts or omissions of the principal party have prevented the intervenor from making use of offensive or defensive measures; or

- b. the principal party has failed, wilfully or through gross negligence, to make use of offensive or defensive measures of which the intervenor was not aware.

Chapter 5 Third-Party Notice and Third-Party Action

Section 1 Third-Party Notice

Art. 78 Principles

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

² The notified third party may also give notice of the dispute.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

principal party, with the consent of the latter.

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

Feedback

Art. 80 Effects of notice

Article 77 applies by analogy.

Section 2 Third-Party Action

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

pute or that it fears the notified party may have against it before the court hearing the main action, provided that:

- a. the claims are factually related to the main action;
- b. the court has material jurisdiction; and
- c. the main action and the claims are to be assessed in ordinary proceedings.⁵²

² The notified third party may not bring a further third-party action.

³ ...⁵³

Feedback

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

be raised against the third party together with a brief statement of the grounds. They shall not be quantified if they relate to the same contractual performance to which the notified party is obliged in the main proceedings.⁵⁴

² The court shall give the opposing party and the third party the opportunity to respond.

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

⁴ An objection may be filed against the decision to admit the third-party action.

Chapter 6 Substitution of a Party

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

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

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

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

Title 6 Actions

Art. 84 Action for performance

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

² In an action for the payment of money, the amount must be specified.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

However, the plaintiff must indicate a minimal amount as a provisional value in dispute.

² Once evidence is taken or the required information furnished by the parties or third parties, the court shall set a deadline for the parties to quantify their claim.⁵⁵ The seised court maintains competence even if the value in dispute exceeds its material jurisdiction.

Art. 86 Partial action

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

Art. 87 Action to modify a legal relationship

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 89 Group action

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

² They may request the court:

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

³ Special legal provisions on group actions are reserved.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

tion of the same court, and

- b. they are subject to the same type of procedure.

² The combination of actions is also permitted if a difference in material jurisdiction or type of proceedings is based solely on the value in dispute. If different types of proceedings apply to the individual claims, they shall be assessed together in the ordinary proceedings.⁵⁶

Feedback

Title 7 Value in Dispute

Art. 91 Principle

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

al usage or services multiplied by twenty is deemed to be the value of the capital; in case of a life annuity, the amount of the capital corresponds to the actual cash value.

Feedback

Art. 93 Joinder of parties and joinder of actions

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

the values of the action and the counter-claim are added together insofar as they are not mutually exclusive.

³ If the main action is a partial action, the legal costs are calculated solely on the basis of the value in dispute in the main action.⁵⁷

Feedback

Art. 94 Group action⁵⁸

In the case of a group action, if the parties are unable to agree on the value in dispute, or if the value they put forward is obviously incorrect, the court shall determine the value in dispute in accordance with the interests of the individual members of the group of persons concerned and the importance of the case.

Title 8 Costs and Legal Aid

Chapter 1 Procedural Costs

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

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

³ The party costs are:

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

Art. 96 Tariffs and right of representatives to party costs ⁵⁹

¹ The cantons set the tariffs for the procedural costs. The fee regulations pursuant to Article 16 paragraph 1 DEBA remain reserved⁶⁰.

² The cantons may provide that the lawyer has an exclusive claim to the fees and expenses awarded as party costs.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 98 Advance payment of costs⁶¹

¹ The court or the conciliation authority may demand that the plaintiff make an advance payment not exceeding one half of the expected court costs.

² It may request an advance payment not exceeding the total estimated court costs in the following cases:

- a. proceedings under Article 6 paragraph 4 letter c and Article 8;
- b. conciliation proceedings;
- c. summary proceedings, with the exception of interim measures under Article 248 letter d and family law disputes under Articles 271, 276, 302 and 305;
- d. appellate proceedings.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

gistered office in Switzerland,

- b. if he or she appears to be insolvent, notably if he or she has been declared bankrupt or is involved in ongoing composition proceedings or if certificates of unpaid debts have been issued;
- c. if he or she owes costs from prior proceedings; or
- d. if for other reasons there seems to be a considerable risk that the compensation will not be paid.

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

³ No security need be provided:

- a. in simplified proceedings, with the exception of financial disputes under Article 243 paragraph 1;
- b. in divorce proceedings;
- c. in summary proceedings, with the exception of the proceedings in clear cases (Art. 257);
- d. ⁶²in proceedings relating to a dispute under the FADP ⁶³.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

land.

² The court may subsequently order the increase, reduction or return of the security.

Feedback

Art. Provision of advance and
101 security

¹ The court sets a deadline for the provision of the advance and the security.

² It may order interim measures before the security is provided.

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

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

Feedback

Art. 103 Appellate remedy

An objection may be filed against decisions relating to advances of costs and security.

Chapter 2 Allocation and Settlement of Procedural Costs

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

that point may be allocated.

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

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

Art. 105 Determination and allocation of costs

¹ The court costs are determined and allocated .

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

event of the acceptance of the claim it is the defendant.

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

³ If three or more persons are participating in the proceedings as principal parties or accessory parties, the court shall determine each party's share of the costs according to the extent of their participation. In the case of mandatory joinder, it may decide that they are jointly and severally liable.⁶⁴

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

... but not the full amount claimed,
and if the amount of the award was
determined at the court's discretion or
if the claim was difficult to quantify;

- b. if a party was caused to litigate in good faith;
- c. in family law proceedings;
- d. in proceedings relating to a registered partnership;
- e. if the proceedings are dismissed as groundless and the law does not provide otherwise;
- f. if there are other extraordinary circumstances that would result in an allocation according to the outcome of the case being inequitable.

^{1bis} In the event of the dismissal of actions under company law for performance to the company, the court may at its discretion apportion the procedural costs between the company and the plaintiff.⁶⁵

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

Art. 108 Unnecessary costs

Unnecessary costs are charged to the party that caused them.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

² The costs are allocated according to Articles 106–108:

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

Art. 110 Appellate remedy

The decision on costs may be separately challenged by filing an objection only.

Art. 111 Recovery of costs

¹ Where a party who has paid an advance is ordered to pay costs, the court costs shall be set off against the advances paid. Otherwise an advance shall be refunded. The party liable to pay the costs shall be required to pay any shortfall.⁶⁶

² The party liable to pay the costs shall pay the other party the party costs awarded.⁶⁷

³ The provisions on legal aid are reserved.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

² The debt prescribes ten years after the close of proceedings.

³ The default interest is 5 percent.

Feedback

Chapter 3 Special Provisions on Costs

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

⁴ No court costs are charged in disputes:

- a. relating to the Gender Equality Act of 24 March 1995⁶⁸;
- b. relating to the Disability Discrimination Act of 13 December 2002⁶⁹;
- c. relating to the rental and lease of residential and business property or the lease of agricultural property;
- d. relating to an employment contract or the Recruitment Act of 6 October 1989⁷⁰ up to an value in dispute of 30,000 francs;
- e. relating to the Participation Act of 17 December 1993⁷¹;
- f. relating to insurance supplementary to the social health insurance under the Federal Act of 18 March 1994⁷² on Health Insurance;
- g.⁷³ under the FADP⁷⁴.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

- b. relating to the Disability Discrimination Act of 13 December 2002⁷⁶;
- c. relating to an employment contract or the Recruitment Act of 6 October 1989⁷⁷ up to an value in dispute of 30,000 francs;
- d. relating to the Participation Act of 17 December 1993⁷⁸;
- e. relating to insurance supplementary to the social health insurance under the Federal Act of 18 March 1994⁷⁹ on Health Insurance;
- f.⁸⁰ because of violence, threats or harassment under Article 28 CC⁸¹ or relating to electronic monitoring under Article 28 CC;
- g.⁸² under the FADP⁸³.

Art. 115 Obligation to bear costs

¹ Court costs may also be charged in cost-free proceedings to a party who proceeds in a vexatious manner or in bad faith.

² In the case of litigation relating to Article 114 letter f, court costs may also be charged to the unsuccessful party if an injunction pursuant to Article 28 CC⁸⁴ or electronic monitoring pursuant to Article 28 CC is ordered against them.⁸⁵

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

provides for itself, its communes or other corporations under public cantonal law also apply to the Confederation.

Feedback

Chapter 4 Legal Aid

Art. 117 Entitlement

A person is entitled to legal aid if:

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

c. the appointment by the court of a legal agent under the legal aid system if this is necessary to protect the rights of the party concerned, and in particular if the opposing party is represented by a legal agent; the legal agent under the legal aid system may be appointed prior to the court hearing in order to prepare the proceedings.

² Legal aid may be granted for all or part of the case. It can also be granted for the precautionary taking of evidence.⁸⁶

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

assets and state his or her position on the merits of the case and the evidence he or she intends to produce. He or she may name a preferred legal agent in the application.

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

⁴ In exceptional circumstances, legal aid may be granted with retrospective effect.

⁵ A new application for legal aid must be made in appellate proceedings.

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

Art. 120 Revocation of legal aid

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 122 Recovery of costs

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

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

after the close of proceedings.

Feedback

Title 9 Director of Proceedings, Procedural Acts and Deadlines

Chapter 1 Director of Proceedings

Art. 124 Principles

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

² The role of director of proceedings may be delegated to one of the members of the court.

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

- b. order the separation of jointly filed actions;
- c. order the joinder of separately filed actions;
- d. separate the counterclaim from the main proceedings.

Feedback

Art. 126 Suspension of proceedings

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

² An objection may be filed against the suspension.

Art. 127 Transfer of connected cases

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

² An objection may be filed against the transfer.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

ary fine not exceeding 1,000 francs. In addition, the court may exclude the person concerned from the hearing.

² The court may request the assistance of the police to enforce its orders.

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

⁴ An objection may be filed against the disciplinary fine.

Chapter 2 Forms of Procedural Acts

Section 1 Language of the Proceedings

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

use in the proceedings.

² Cantonal law may provide for the following languages to be used at the request of all parties:

- a. a different national language, whereby no party may waive the language of proceedings in accordance with paragraph 1 in advance;
- b. English in international commercial disputes under Article 6 paragraph 4 letter c before the commercial court or the ordinary court.⁸⁷

Feedback

Section 2 Party Submissions

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

submission and its enclosures must bear a qualified electronic signature in accordance with the Federal Act of 18 March 2016⁸⁹ on Electronic Signatures. The Federal Council shall regulate:

- a. the format for submissions and their attachments;
- b. the method of transmission;
- c. the requirements for requesting the submission of documents in paper form in the event of technical problems.

Art. 131 Number of copies

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

taken into consideration.

² The same applies to submissions that are illegible, improper, incomprehensible or incoherent.

³ Querulous or abusive submissions are returned to the sender without further formalities.

Section 3 Summons

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

- c. the capacity in which the party is summoned;
- d.⁹⁰ the place, date and time of the required appearance or the availability required when using electronic equipment for audio or video transmission;
- d. the place, date and time of the appearance;
- e. the procedural act to which the party is summoned;
- f. the consequences of default;
- g. the date of the summons and the seal of the court.

Art. 134 Timing

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

- b. if a request to do so is made before the date.

Feedback

Section 4 Service of Process

Art. 136 Documents to be served

The court shall serve the persons concerned in particular with:

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

Art. 137 Service to a representative

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

ment has been received by the addressee or one of his or her employees or a person of at least 16 years of age living in the same household, unless the court instructs that a document must be served personally on the addressee.

³ Service is also deemed to have been effected:

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

⁴ Other documents may be served by regular mail.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Federal Act of 18 March 2010 on Elec-
tronic Signatures.

² The Federal Council regulates:

- a. the signature to be used;
- b. the format for summonses, rulings
and decisions and their attachments;
- c. the method of transmission;
- d. the point in time at which the sum-
mons, ruling or decision is deemed to
have been served.

Feedback

Art. 140 Domicile for service

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

unknown and cannot be ascertained
despite making reasonable enquiries;

- b. service is impossible or would lead to exceptional inconvenience;
- c. if a party with domicile or registered office abroad has not provided a domicile for service in Switzerland despite being instructed to do so by the court.

² Service is deemed accomplished on the day of publication.

Section 5 Use of Electronic Equipment for Audio or Video Transmission⁹³

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

icipating in the proceedings to do so by using such equipment, unless the law provides otherwise and all parties agree.

² If this Code requires the parties to appear in person, the use of electronic equipment is only permitted if the parties agree and there are no overriding public or private interests to the contrary.

³ If a hearing in accordance with this Code is public, the court shall grant access to the courtroom on request. The court may also grant access by electronic means without a prior request being required.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

ages between all persons participating in the procedural act takes place simultaneously.

- b. The examination of witnesses, questioning of parties, giving of evidence and personal hearings shall be recorded; other hearings may exceptionally be recorded on request or , unless the sole purpose of a hearing is to freely discuss the matter in dispute or to attempt to reach an agreement.
- c. Data protection and data security are guaranteed.

² With the consent of the persons concerned, video transmission may be dispensed with by way of exception if there is particular urgency or other special circumstances in the individual case.

³ The Federal Council shall regulate the technical requirements and the requirements for data protection and data security.

Chapter 3 Limitation Periods, Default and Reinstatement

Section 1 Limitation Periods

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

post on a Saturday, a Sunday or a public holiday recognised under federal or cantonal law at the place of jurisdiction (Art. 138 para. 4), the communication under paragraph 1 shall be deemed to have been made on the following working day.⁹⁴

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

consular office of Switzerland for forwarding on to the court.

^{1bis} Submissions that are mistakenly filed within the time limit with a Swiss court that does not have jurisdiction are deemed to have been filed on time. If another court in Switzerland has jurisdiction, the court without jurisdiction shall forward the submission. ⁹⁵

² In case of electronic submission, the relevant time for compliance with a deadline is that at which the receipt is issued that confirms that all the steps have been completed that the party must carry out for transmission. ⁹⁶

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

do so is made before the period expires.

Feedback

Art. Suspension of limitation
145 periods

¹ Statutory limitation periods or periods set by the court shall be suspended:

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

² The suspension does not apply:

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

³ Parties must be made aware of the exceptions provided in paragraph 2 above.

⁴ The provisions of this Code on the suspension of time limits apply to all actions under the DEBA⁹⁷ which are to be brought before a court. They do not apply to objections filed with the supervisory authority.⁹⁸

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

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

Feedback

Section 2 Default and Reinstatement

Art. Default and consequences of
147 default

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

² The proceedings shall continue without the act defaulted on unless the law provides otherwise.

³ The court shall draw the parties' attention to the consequences of default.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

responsible for the default or was responsible only to a minor extent.

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

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

Art. 149 Reinstatement procedure⁹⁹

The court shall invite the opposing party to comment on the application and shall issue a final decision unless the refusal to reinstate the proceedings results in the permanent loss of rights.

Title 10 Proof

Chapter 1 General Provisions

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

pates, foreign law.

Feedback

Art. 151 Known facts

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

Art. 152 Right to have evidence accepted

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 154 Ruling on evidence

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

Art. 155 Taking of evidence

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

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

³ The parties have the right to participate in the taking of evidence.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 157 Free assessment of evidence

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

Art. 158 Precautionary taking of evidence

¹ The court shall take evidence at any time if:

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

² The provisions regarding interim measures apply.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Chapter 2 Duty to Cooperate and Right to Refuse

Section 1 General Provisions

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

party or a witness,

- b. ¹⁰⁰to produce the physical records, with the exception of documents forming correspondence between a party or a third party and a lawyer who is entitled to act as a professional representative, or with a patent attorney as defined in Article 2 of the Patent Attorney Act of 20 March 2009 ¹⁰¹;
- c. to allow an examination of their person or property by an expert.

² The court has free discretion to decide on the duty of minors to cooperate. ¹⁰² It shall take account of the child's welfare.

³ Third parties that are under a duty to cooperate are entitled to reasonable compensation.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

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

Feedback

Art. 162 Justified refusal to cooperate

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

Section 2 Parties' Right to Refuse

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

b. the disclosure of a secret would be an offence under Article 321 of the Swiss Criminal Code (SCC)¹⁰³; the foregoing does not apply to auditors; Article 166 paragraph 1 letter b third subset applies by analogy.

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

Art. 164 Unjustified refusal

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

Section 3 Third Parties' Right to Refuse

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

- b. any person who has a child with a party;
- c. any person who is related to a party by birth or marriage in direct line or collaterally up to the third degree;
- d. the foster parents, foster children and foster siblings of a party;
- e. ¹⁰⁴the person appointed guardian or deputy for a party.

² A registered partnership is deemed equivalent to marriage.

³ Step-siblings are deemed equivalent to siblings.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

- b. to the extent that the revelation of a secret would be an offence by virtue of Article 321 SCC¹⁰⁵; auditors excepted; however, with the exception of lawyers and clerics, third parties must cooperate if they are subject to a disclosure duty or if they have been released from duty of secrecy, unless they show credibly that the interest in keeping the secret takes precedence over the interest in finding the truth;
- c.¹⁰⁶ in establishing facts that have been confided in him or her in his or her official capacity as public official as defined in Article 110 paragraph 3 SCC or as a member of a public authority, or facts that have come to his or her attention in exercising his or her office or while carrying out an auxiliary activity for a public official or an authority; he or she must cooperate if he or she is subject to a disclosure duty or if he or she has been authorised to testify by his or her superior authority;
- d.¹⁰⁷ when asked to testify as an ombudsperson, marriage or family counsellor or mediator on facts that have come to his or her attention in the course of his or her activities;
- e. when asked in his or her capacity as professional or auxiliary person engaged in the publication of information in the editorial part of a periodical to reveal the identity of the author or the content or source of his or her information.

² The confidants of other legally protected secrets may refuse to cooperate if they show credibly that the interest in keeping

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 167 Unjustified refusal

¹ If a third party refuses to cooperate without justification, the court may:

- a. impose a disciplinary fine up to 1,000 francs;
- b. threaten sanctions under Article 292 SCC¹⁰⁸;
- c. order the use of compulsory measures;
- d. charge the third party the costs caused by the refusal.

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

³ The third party may file an objection against the court's order.

Section 4 Right to Refuse in relation to the Activities of an In-House Legal Service¹⁰⁹

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Swiss Commercial Register or in a comparable foreign register;

- b. the legal service is headed by a person who holds a cantonal licence to practise law or who fulfils the professional requirements for practising law in their country of origin; and
- c. the activity in question would be considered profession-specific for a lawyer.

² A third party may refuse to cooperate and to hand over documents in connection with their activities in an internal legal service subject to the conditions set out in paragraph 1.

³ The parties and the third parties may file an objection against decisions on the refusal to cooperate in accordance with paragraphs 1 and 2.

⁴ The costs of disputes concerning the right of refusal in accordance with paragraphs 1 and 2 shall be borne by the party or third person who invokes it.

Chapter 3 Evidence

Section 1 Admissible Evidence

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

- d. expert opinion;
- e. written statements;
- f. the examination of and evidence given by the parties.

² The provisions relating to matters of children in family law proceedings are reserved.

Feedback

Section 2 Testimony

Art. 169 Subject matter

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

place of residence. The parties must be notified thereof in advance.

Feedback

Art. Examination by video **110**
170 conference

The court may conduct the examination of a witness by videoconference or other electronic method of audio or video transmission, or question a witness by such means while the other participants are present on the court's premises, provided there are no overriding public or private interests, in particular the safety of the witness, to the contrary.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

consequences of perjury (Art. 307 SCC).

² The court shall question each witness individually with no other witnesses present; the foregoing is subject to the provision on confrontation.

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

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

Art. 172 Content of the examination

The court shall ask witnesses:

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 174 Confrontation

Witnesses may be confronted with other witnesses and with the parties.

Art. 175 Testimony of an expert witness

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

has requested additional questions, but the request has been rejected, the questions shall also be recorded if a party so requests. ¹¹²

² In addition, the statement may be recorded on tape, by video or by using other appropriate technical aids.

³ ... ¹¹³

Art. 176 Transcript of recordings ¹¹⁴

If the statements made during a hearing are recorded using technical aids, the following derogations apply to the transcript:

- a. The transcript may be created retrospectively based on the recording.
- b. The court or the member of court conducting the examination may dispense with reading the transcript to the witness or giving the witness the transcript to read and sign.
- c. The recording is placed on file.

Section 3 Physical Records

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

the like as well as private expert opinions
obtained by the parties.

Feedback

Art. 178 Authenticity

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

Art. 179 Probative effect of public registers and official records

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

there is justified doubt as to the authenticity of the physical record.

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

Section 4 Inspection

Art. 181 Procedure

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

² The court may summon witnesses or experts to the inspection.

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Section 5 Expert Opinion

Art. 183 Principles

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

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

The court shall caution the expert as to the criminal consequences of perjury by an expert witness in terms of Article 307 SCC¹¹⁶ and of a breach of official secrecy under Article 320 SCC as well as the consequences of default or failure to perform the mandate adequately.

³ The expert is entitled to a fee. An objection may be filed against the decision of the court on the fee.

Art. 185 Mandate

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

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

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

Feedback

Art. 187 Submission of the opinion

¹ The court may order that the expert submits his or her opinion in writing or presents it orally. It may also summon the expert to the hearing in order to explain his or her written opinion. Article 170 applies .¹¹⁷

² An orally presented opinion must be placed on record in accordance with Articles 176 and 176.¹¹⁸

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

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

Feedback

Art. 189 Arbitrator's opinion

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

² Article 17 paragraph 2 governs the form of the agreement.

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

- a. the parties are free to dispose of the legal relationship;
- b. no grounds for recusal existed against the expert arbitrator; and
- c. the opinion has been stated in an impartial manner and is not manifestly incorrect.

Section 6 Written Information

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

of a witness seems unnecessary.

Feedback

Section 7 Examination of the Parties and Giving Evidence

Art. 191 Examination of the parties

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

² Before the examination, the parties shall be cautioned that they must tell the truth and advised that if they wilfully fail to do so, they may be liable to a disciplinary fine not exceeding 2,000 francs or, in the event of repeated failure, not exceeding 5,000 francs.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

be cautioned that they must tell the truth and advised of the criminal consequences of perjury (Art. 306 SCC¹¹⁹).

Feedback

Art. 193 Transcript and video conference procedure **120**

Articles 170a 176 and 176 apply to the questioning of parties and the evidence given.

Title 11 Mutual Assistance between Swiss Courts

Art. 194 Principle

¹ Courts are obliged to provide mutual assistance.

² They shall correspond directly with each other¹²¹.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 196 Mutual assistance

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

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

³ The requested court may demand the reimbursement of its outlays.

Part 2 Special Provisions**Title 1 Attempt at Conciliation****Chapter 1 Scope of Application and Conciliation Authority**

LAWBRARY

Law text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

pursuant to Article 28 CC;

- b. in proceedings on civil status;
- b^{bis}. ¹²⁴in proceedings relating to maintenance for minor and adult children and other children's matters;
- c. in divorce proceedings;
- d. ¹²⁵in proceedings for the dissolution or annulment of a registered partnership;
- e. for the following actions arising from the DEBA ¹²⁶:
 - 1. action for release from a debt (Art. 83 para. 2 DEBA),
 - 2. action for a declaratory judgment (Art. 85 DEBA),
 - 3. third party action (Art. 106-109 DEBA),
 - 4. action for participation (Art. 111 DEBA),
 - 5. third party actions and actions by the bankrupt estate (Art. 242 DEBA),
 - 6. action to challenge the schedule of claims (Art. 148 and 250 DEBA),
 - 7. action to ascertain new assets (Art. 265a DEBA),
 - 8. action for the recovery of items that are subject to the right of retention (Art. 284 DEBA);
- f. ¹²⁷in disputes for which a court of sole cantonal instance has jurisdiction pursuant to Article 7 of this Code;
- f. in disputes for which a court of sole cantonal instance has jurisdiction pursuant to Articles 5 and 6;
- g. for principal intervention, counter-claim and third-party actions;

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 199 Waiver of conciliation

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

² The plaintiff may unilaterally waive conciliation:

- a. if the defendant's registered office or domicile is abroad;
- b. if the defendant's residence is unknown;
- c. in disputes under the Gender Equality Act of 24 March 1995¹³⁰.

³ In disputes for which a single cantonal instance has jurisdiction under Articles 5, 6 and 8, the plaintiff may bring the action directly before the court.¹³¹

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

entatives of each of the parties.

² In disputes under the Gender Equality Act of 24 March 1995¹³², the conciliation authority shall comprise a chairperson and an equal number of representatives of the employer and employee and of the public and private sectors; the genders must be equally represented.

Art. 201 Tasks of the conciliation authority

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

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

Chapter 2 Conciliation Proceedings

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

conciliation authority.

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

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

⁴ In the disputes mentioned in Article 200, it may as an exception order the exchange of written submissions if it is considering a decision proposal ¹³³ under Article 210 or a decision under Article 212.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

the physical records presented to it and may conduct an inspection. If it is considering a decision proposal under Article 210 or a decision under Article 212, it may also take other evidence unless this will substantially delay the proceedings.

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

appear on its behalf who is authorised to conduct the proceedings and conclude a settlement and who is familiar with the subject matter of the dispute. ¹³⁴

² The parties may be accompanied by legal agent or a confidant. ¹³⁵

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

- a. ¹³⁶a person or entity domiciled or registered outside the canton or abroad;
- b. a person prevented from appearing due to illness or age or for other good cause;
- c. in the disputes mentioned in Article 243, a person who as an employer or insurer delegates an employee or who as the landlord delegates the property manager, provided the person so delegated is authorised in writing to conclude a settlement.
- d. ¹³⁷any one of two or more plaintiffs or defendants, provided one of the parties is present and authorised to represent the other plaintiffs or defendants and to conclude a settlement on their behalf.

⁴ The opposing party must be notified in advance of the representation.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

The use of the statements in the case of a decision proposal or a decision by the conciliation authority is reserved.

Feedback

Art. 206 Default

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

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

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

⁴ An disciplinary fine of up to CHF 1,000 may be imposed on a defaulting party. ¹³⁸

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

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

² If an action is filed, the costs of the conciliation proceedings become part of the action.

Feedback

Chapter 3 Agreement and Authorisation to Proceed

Art. 208 Agreement between the parties

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

increase is challenged,

b. to the plaintiff in all other cases.

² The authorisation to proceed contains:

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

³ The plaintiff is entitled to file the action in court within three months of authorisation to proceed being granted.⁴ The deadline is 30 days in disputes over the tenancy and lease of residential and business property or the lease of agricultural property.¹³⁹

Chapter 4 Decision Proposal and Decision

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

b. in disputes relating to the tenancy and lease of residential and business property or the lease of agricultural property if they concern the deposit of rent, protection against abusive rent, protection against termination, or the extension of the rental relationship;

c.¹⁴² in other financial disputes, if the value in dispute does not exceed 10,000 francs.

² The decision proposal may contain a short statement of grounds; otherwise, Article 238 applies by analogy.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

parties. The rejection needs no statement of grounds.

² After receiving the rejection, the conciliation authority shall grant authorisation to proceed:

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

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

⁴ The parties must be advised in the decision proposal of its effects in accordance with paragraphs 1 to 3 above.

Art. 212 Decision

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

² The proceedings are oral.

³ In the event of a decision pursuant to paragraph 1, the conciliation authority shall determine the court costs and the party costs. ¹⁴³

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

ation proceedings shall be replaced by mediation.

² The request must be made in the application for conciliation or at the conciliation hearing.

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

Art. 214 Mediation during court proceedings

¹ The court may recommend mediation to the parties at any time.

² The parties may at any time make a joint request for mediation.

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 216 Relationship with court proceedings

¹ Mediation proceedings are confidential and kept separate from the conciliation authority and the court.

² The statements of the parties may not be used in court proceedings.

Art. 217 Approval of an agreement

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

- a. they do not have the necessary financial resources; and
- b. the court recommends mediation.

³ Cantonal law may provide for further exemptions from costs.

Feedback

Title 3 Ordinary Proceedings

Chapter 1 Scope of Application

Art. 219

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 221 Statement of claim

¹ The statement of claim contains:

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

² The following must be filed together with the statement of claim:

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

³ The statement of claim may include a statement of legal grounds.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

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

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

⁴ It shall serve the plaintiff with the statement of defence.

Art. 223 Failure to file a statement of defence

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

tion.

^{1bis} The counterclaim is also admissible and shall be assessed together with the main action in ordinary proceedings if:

- a. the claim asserted is only to be assessed under the simplified procedure because of the value in dispute, but the main action is to be assessed in the ordinary procedure; or
- b. the counterclaim seeks to establish the non-existence of a right or legal relationship after only part of a claim arising from this right or legal relationship has been asserted in the main action and the simplified procedure therefore only applies because of the value in dispute.¹⁴⁵

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 226 Instruction hearing

¹ The court may hold instruction hearings at any time during the proceedings.

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

³ The court may take evidence.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

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

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

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

Chapter 3 Main Hearing

Art. 228 Opening party submissions

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

² The court shall give them the opportunity to make a reply and rejoinder.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

ing party submission in accordance with Article 228 paragraph 1 without restriction.¹⁴⁶

² In other cases, new facts and evidence may be submitted by a deadline set by the court or, in the absence of such a deadline, at the latest by the opening party submission in the main hearing in accordance with Article 228 paragraph 1:

- a. if they occurred after the exchange of written submissions or after the last instruction hearing (); or
- b. if they existed before the close of the exchange of written submissions or before the last instruction hearing but could not have been submitted despite reasonable diligence ().¹⁴⁷

^{2bis} After the opening party submissions, new facts and evidence in accordance with paragraph 2 letters a and b shall only be taken into account if they are submitted within the deadline set by the court or, in the absence of such a deadline, at the latest at the next hearing.¹⁴⁸

³ Where the court must establish the facts , new facts and new evidence may be admitted until the court begins its deliberations.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

b. ¹⁴⁹the amendment is based on new facts or new evidence.

² Article 227 paragraphs 2 and 3 apply.

Feedback

Art. 231 Taking of evidence

After the party submissions, the court takes the evidence.

Art. 232 Closing submissions

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. Failure to attend the main
234 hearing

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

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

Chapter 4 Records

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

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

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

³ The court decides on applications for rectification of the record.

Chapter 5 Decision

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

² The court decides by majority.

³ At the request of the successful party, the court shall order enforcement measures.

Feedback

Art. 237 Interim decision

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

- c. the designation of the parties and their representatives;
- d. the conclusions;
- e. the persons and authorities to be served with the decision;
- f. instructions on appellate remedies unless the parties have waived their right to seek the same;
- g. ¹⁵⁰the main factual and legal grounds for the decision, if applicable;
- g. the grounds for the decision, if applicable;
- h. the seal of the court.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

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

b. ¹⁵²by serving the parties promptly with the conclusions.

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

³ The above is subject to the provisions of the Federal Supreme Court Act of 17 June 2005 ¹⁵³ on notice of decisions that may be referred to the Federal Supreme Court.

Art. Notice and publication of the
240 decision

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

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

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

³ The court shall dismiss the proceedings.

Art. 242 Proceedings made groundless **155**
for other reasons

If for any other reasons the proceedings end without a substantive decision, the court shall issue a decision dismissing the proceedings.

Title 4 Simplified Proceedings

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

pute in the case of: ¹⁵⁹

- a. disputes under the Gender Equality Act of 24 March 1995 ¹⁵⁷;
- b. ¹⁵⁸disputes concerning violence, threats or stalking pursuant to Article 28 CC ¹⁵⁹ or concerning electronic monitoring pursuant to Article 28 CC;
- c. disputes concerning the tenancy and lease of residential and business property or the lease of agricultural property if they concern the deposit of rent, protection against abusive rent, protection against termination, or the extension of the rental relationship;
- d. ¹⁶⁰disputes concerning the right of access to personal data under Article 25 FADP ¹⁶¹;
- e. disputes concerning the Participation Act of 17 December 1993 ¹⁶²;
- f. disputes concerning insurance supplementary to the social health insurance under the Federal Act of 18 March 1994 ¹⁶³ on Health Insurance.

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

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

² A statement of the grounds for the claim is not necessary.

³ The following must be filed together with the statement of claim:

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

hearing, the court shall immediately issue one further summons to the hearing and inform the parties of the consequences of any further default on their part. The hearing shall take place within 30 days of the first hearing. ¹⁶⁴

² If the grounds for the action are stated, the court shall first set a deadline for the defendant to file a written response to the claim. If the court summons the parties to the hearing, Article 234 applies in the event of default. ¹⁶⁵

Art. 246 Procedural rulings

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

⁴ In the following cases, the court shall establish the facts :

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

Title 5 Summary Proceedings

Chapter 1 Scope of Application

Art. 248 Principle

Summary proceedings may be brought:

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

transactions by minors or persons subject to a general deputyship (Art. 19 CC ¹⁶⁸),

2. right of reply (Art. 281 CC),
3. declaration of presumed death (Art. 35–38 CC),
4. rectification of the civil status registry (Art. 42 CC),
5. ¹⁶⁹measures in the event of organisational defects of an association (Art. 69 CC);

b. ¹⁷⁰...

c. Law of succession:

1. acceptance of an oral will (Art. 507 CC),
2. provision of security when inheriting from a person presumed dead (Art. 546 CC),
3. deferring the division of the estate and ordering measures to secure the claims of the co-heirs towards an insolvent heir (Art. 604 para. 2 and 3 CC);

d. Property law:

1. measures to preserve the value and the serviceability of an object in joint property (Art. 647 para. 2 no. 1 CC),
2. registration of real titles in case of extraordinary adverse possession (Art. 662 CC),
3. dismissal of an objection to the disposal of a condominium unit (Art. 712 para. 3 CC),
4. appointment and removal of the condominium administrator (Art. 712 and 712 CC),
5. provisional registration of stat-

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

debts in a usufructuary estate (Art. 766 CC),

8. measures in favour of the creditor to protect the value of the real estate security interest (Art. 808 para. 1 and 2 and Art. 809–811 CC),
9. ¹⁷¹appointing an authorised agent on the issue of a mortgage certificate (Art. 850 para. 3 CC),
10. ¹⁷²cancellation of a mortgage certificate (Art. 856 and 865 CC),
11. noting of restrictions on powers of disposal and provisional entries in disputed cases (Art. 960 para. 1 sec. 1, 961 para. 1 sec. 1 and 966 para. 2 CC).

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

attorney with the court (Art. 30 para. 1 CO¹⁷⁴),

2. setting a reasonable deadline to provide security (Art. 83 para. 2 CO),
3. deposit and sale of an object for the event of an obligee's default (Art. 92 para. 2 and 93 para. 2 CO),
4. authorisation for performance by a third party (Art. 98 CO),
5. setting a time limit to perform a contract (Art. 107 para. 1¹⁷⁵ CO),
6. deposit of an value in dispute (Art. 168 para. 1 CO);

b. Specific contracts:

1. designation of an expert to verify the calculation of the profit share or commissions (Art. 322 para. 2 and 322 para. 2 CO),
2. setting a deadline to provide security in the event that a salary is at risk (Art. 337 CO),
3. setting a time limit in the case of non-contractual performance of work (Art. 366 para. 2 CO),
4. appointment of an expert to inspect the work (Art. 367 CO),
5. setting a time limit for the publication of a new edition of a literary or artistic work (Art. 383 para. 3 CO),
6. return of an object held by an official receiver (Art. 480 CO),
7. assessing the extent of cover by pledge in the case of joint and several surety (Art. 496 para. 2 CO),

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

from liability (Art. 500 CO),

c. Company law and the commercial register:¹⁷⁶

1. provisional withdrawal of the authority to represent (Art 565 para. 2, 603 and 767 para. 1 CO),
2. appointment of a joint representative (Art. 690 para. 1, 764 para. 2, 792 sec. 1 and 847 para. 4 CO),
3. appointment, dismissal and replacement of liquidators (Art. 583 para. 2, 619, 740, 741, 770, 826 para. 2 and 913 CO),
4. sale at an overall sale price and modalities of sale of immovable property (Art. 585 para. 3 and 619 CO),
5. appointment of an expert to verify the profit and loss account and the balance sheet of the limited partnership (Art. 600 para. 3 CO),
- 6.¹⁷⁷ measures in the event of defects in the organisation of the company or co-operative (Art. 731, 819 and 908 OR),
- 7.¹⁷⁸ ordering the disclosure of information to creditors, shareholders and members of a limited liability company and to members of a cooperative (Art. 697, 802 para. 4, 857 para. 3 and 958 CO),
- 8.¹⁷⁹ a special investigation (Art. 697–697^{bis} CO),
- 9.¹⁸⁰ convening a general meeting, putting an item on the agenda,

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

ive of the company or the cooperative in the event of a resolution of the general meeting being challenged by the management (Art. 706 para. 2, 808 and 891 para. 1 CO),

11. ¹⁸²...

12. deposit of amounts of claims in case of liquidation (Art. 744, 770, 826 para. 2 and 913 CO),

13. ¹⁸³ removal of the directors and auditors of a cooperative (Art. 890 para. 2 CO),

14. ¹⁸⁴ reinstatement of a deleted legal entity in the commercial register (Art. 935 CO),

15. ¹⁸⁵ ordering the dissolution of the company and its liquidation in accordance with the provisions on bankruptcy (Art. 731, 819 und 908 CO),

16. ¹⁸⁶ deletion of a legal entity (Art. 934 para. 3 CO);

d. Securities law:

1. cancellation of securities (Art. 981 CO),

2. prohibition of paying a bill of exchange and deposit of the amount payable under the bill (Art. 1072 CO),

3. lapse of the authority conferred by the creditors meeting on the representative of the community of creditors (Art. 1162 para. 4 CO),

4. convening a creditors meeting on the application by the bond creditors (Art. 1165 para. 3 and 4 CO).

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Summary proceedings may be brought in the following cases: ¹⁸⁷

- a. decisions made in matters of clearance to proceed, bankruptcy, attachment and composition;
- b. admission of a belated objection (Art. 77 para. 3 DEBA ¹⁸⁸) and of the objection in the enforcement of bills of exchange (Art. 181 DEBA);
- c. revocation or suspension of the debt collection proceedings (Art. 85 DEBA);
- d. decision on the existence of new assets (Art. 265 para. 1–3 DEBA);
- e. ordering the separation of property (Art. 68b DEBA).

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

an arbitral tribunal (Art. 179 para. 2–5 PILA¹⁹¹);

- b. challenging and removing a member of an arbitral tribunal (Art. 180 para. 2 and Art. 180 para. 2 PILA);
- c. obtaining assistance from the state court in enforcing interim measures (Art. 183 para. 2 PILA) and in taking evidence (Art. 184 para. 2 PILA);
- d. obtaining other forms of assistance from the state court in the arbitration proceedings (Art. 185 PILA);
- e. obtaining assistance from the state court in the case of foreign arbitration proceedings (Art. 185 PILA);
- f. depositing the award and certifying its enforceability (Art. 193 PILA);
- g. acknowledging and executing foreign awards (Art. 194 PILA).

² Cantonal law may provide that, at the request of all parties, English is used as the language of proceedings if English is used for the arbitration agreement or arbitration clause or as the language of proceedings in the arbitration.¹⁹²

Chapter 2 Procedure and Decision

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

cases, it may be filed orally on record.

Feedback

Art. 253 Answer

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

Art. 254 Evidence

¹ Proof must be provided in the form of physical records.

² Other evidence is admissible in the following cases:

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 256 Decision

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

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

Chapter 3 Clear Cases

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

b. the legal situation is clear.

² The case is subject to the principle of ex-officio assessment.

³ If the case is not admissible under the foregoing procedure, the court does not consider the case.

Feedback

Chapter 4 Court Injunction

Art. 258 Principle

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 260 Opposition

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

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

Chapter 5 Interim Measures and Protective Letter

Section 1 Interim Measures

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

has been violated or a violation is anticipated; and

- b. the violation threatens to cause not easily reparable harm to the applicant.

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

Feedback

Art. 262 Subject matter

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

automatically ineffective in the event of default.

Feedback

Art. 264 Security and damages

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

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

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

diately and without hearing the opposing party.

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

³ Before ordering interim measures, the court may order the applicant to provide security.

Art. 266 Measures against the media

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

- a. ¹⁹³an existing or imminent violation of rights is causing or may cause the applicant a particularly serious disadvantage;
- a. the imminent violation of rights may cause the applicant a particularly serious disadvantage;
- b. the violation is obviously not justified; and
- c. the measure does not seem disproportionate.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 268 Modification and revocation

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

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

Art. 269 Reservation

The following provisions are reserved:

- a. the provisions of the DEBA¹⁹⁴ on protective measures when enforcing monetary claims;
- b. the provisions of the CC¹⁹⁵ on protective measures in succession;
- c. the provisions of the Patents Act of 25 June 1954¹⁹⁶ on the action relating to the granting of a licence.

Section 2 Protective Letter

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

applied for without prior hearing, may set out his or her position in advance by filing a protective letter.¹⁹⁸

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

³ The protective letter becomes ineffective six months after it is filed.

Title 6 Special Proceedings in Marital Law

Chapter 1 Summary Proceedings

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

- a. the measures under Articles 172–179 CC **199**;
- b. the extension of a spouse's power to represent the marital union (Art. 166 para. 2 sec. 1 CC);
- c. the authorisation of a spouse to dispose of the family home (Art. 169 para. 2 CC);
- d. the duty of a spouse to provide information on his or her income, assets and debts (Art. 170 para. 2 CC);
- e. the separation of property and the reinstatement of the prior property regime (Art. 185, 187 para. 2, 189 and 191 CC);
- f. the obligation of spouses to cooperate in drawing up an inventory (Art. 195 CC);
- g. the determination of payment deadlines and the provision of security between the spouses outside proceedings on the division of the marital property (Art. 203 para. 2, 218, 235 para. 2 and 250 para. 2 CC);
- h. the spouse's consent to the renunciation or acceptance of an inheritance (Art. 230 para. 2 CC);
- i. directions to debtors and the provision of security for post-matrimonial maintenance outside proceedings on post-matrimonial maintenance (Art. 132 CC).

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 273 Procedure

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

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

³ The court shall attempt to find an agreement between the parties.

Chapter 2 Divorce Proceedings**Section 1 General Provisions****Art. 274** Initiation

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

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 276 Interim measures

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

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

³ The court may also order interim measures after the dissolution of the marriage if proceedings relating to the effects of the divorce continue.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

² If the court establishes that physical records required to decide the financial consequences of the divorce are missing, it shall order the parties to produce such documents.

³ The court shall otherwise establish the facts .

Art. 278 Personal appearance

The parties must appear in person at the hearing unless the court exempts them for reasons of illness or age or for other good cause.

LAWBRARY

Law text

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Search

EN

LOGIN

LAWBRARY

LOGIN

reflection, and that the agreement is clear, complete and not manifestly inequitable; the provisions on occupational pensions are reserved.

² The agreement is valid only when it has been approved by the court. It must be included in the conclusions to the decision.

Feedback

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

- a. the spouses have agreed on the equitable division and its modalities;
- b.²⁰² the spouses provide confirmation from the occupational pension schemes concerned on the practicability of the arrangement and of the amount of the entitlements or pensions; and
- c. the court is persuaded that the agreement conforms to the law.

² The court shall inform the pension schemes concerned about the relevant parts of the final decision, including the details required in order to transfer of the agreed amounts. The decision is binding on the pension schemes.

³ If the spouses agree not to divide their pensions equally or if they decline to divide their pensions, the court shall examine whether appropriate financial security for age or invalidity remains guaranteed.²⁰³

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

to the provisions of the CC²⁰⁵ and the Vested Benefits Act of 17 December 1993²⁰⁶ (VBA) (Art. 122 and 123 CC in conjunction with Art. 22–22 VBA), determine the amount to be transferred and set a deadline for the pension funds concerned to confirm the practicability of the planned arrangement.²⁰⁷

² Article 280 paragraph 2 applies by analogy.

³ In other cases in which no agreement is reached, after the final decision on the apportionment of the shares, the court shall refer the matter to the competent court under the VBA, advising it in particular of:²⁰⁸

- a. the decision on the apportionment of the shares;
- b. the date of marriage and the date of divorce;
- c.²⁰⁹ the pension funds against which the spouses are likely to have entitlements, and the amount of these entitlements;
- d.²¹⁰ the occupational pension funds that pay the spouses pensions, the amount of those pensions and the shares of the pensions paid.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

- b. the amount allocated to the spouse and to each child;
 - c. the amount necessary to assure the proper maintenance of the entitled spouse, if a subsequent increase in the pension is reserved;
 - d. whether and to what extent the pension will be adjusted to changes in living costs.
- ² If the maintenance payment for the spouse is challenged, the appellate court may also reassess the maintenance payments for the children, even if they are not challenged.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

arate proceedings.

³ The equitable division of claims to occupational pension assets may be referred in their entirety to separate proceedings if claims to pension assets abroad are involved and a decision can be obtained in the state concerned on their equitable division. The court may suspend the separate proceedings until the foreign decision has been taken; it may already determine the shares on division.²¹¹

Art. 284 Adjusting the binding effects of divorce

¹ The conditions and the material jurisdiction for adjusting a decision are governed by Articles 124 paragraph 2, 129 and 134 CC.^{212, 213}

² Non-contentious modifications may be agreed in a simple written agreement, subject to the provisions of the CC concerning matters relating to children (Art. 134 para. 3 CC).

³ The provisions on the divorce action apply by analogy to the proceedings for contentious modifications.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

tains:

- a. the names and addresses of the spouses and details of their representatives, if any;
- b. the joint divorce request;
- c. the comprehensive agreement on the effects of the divorce;
- d. the joint applications with regard to the children;
- e. the necessary documents;
- f. the date and signatures.

Art. 286 Submission in the case of partial agreement

¹ In their submission, the spouses must apply for the court to rule on the effects of divorce on which they have not reached an agreement.

² Each spouse may submit his or her justified application on the effects of the divorce that are not part of the agreement.

³ Otherwise Article 285 applies by analogy.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 288 Continuation of the proceedings
and decision

¹ If the conditions for a divorce at joint request are fulfilled, the court shall decree the divorce and approve the agreement.

² If the effects of the divorce remain disputed, the proceedings shall be continued with regard to these effects with the parties as adversaries.²¹⁶ The simplified procedure applies.²¹⁷ The court may assign the roles of plaintiff and defendant.²¹⁸

³ If the requirements for divorce at joint request are not met, the court shall reject the joint request for divorce and at the same time set a deadline to each spouse for the filing of a divorce action.²¹⁹ The proceedings remain pending during this period and any interim measures continue to apply.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Section 3 Action for Divorce

Art. 290 Filing the action

An action for divorce may be filed without a written statement of the grounds. It shall contain:

- a. the names and addresses of the spouses and the designation of their representatives, if any;
- b. the prayer for relief requesting the divorce and an indication of the grounds (Art. 114 or 115 CC²²⁰);
- c. the prayers for relief concerning the financial effects of the divorce;
- d. the prayers for relief concerning the children;
- e. the necessary documents;
- f. the date and signatures.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

court shall attempt to secure an agreement between the spouses with regard to the effects of the divorce.

³ If grounds for divorce are not established or if an agreement cannot be reached, the court shall give the plaintiff the opportunity to state or add to the grounds. The proceedings shall be continued with the parties as adversaries. The simplified procedure applies. ²²¹

Art. 292 Change to divorce at joint request

¹ The proceedings shall continue according to the provisions on divorce at joint request if the spouses:

- a. have been separated for less than two years at the time the case becomes pending; and
- b. agree to the divorce.

² If the grounds for divorce claimed are established, no change to proceedings for divorce at joint request is made.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Section 4 Actions for Annulment and Separation

Art. 294

¹ The procedure for actions for annulment and for separation is governed by analogy by the provisions on actions for divorce.

² An action for separation may be transformed into an action for divorce at any time prior to the court beginning deliberations on the decision.

Title 7 Proceedings relating to Children in Family Law Matters

Chapter 1 General Provisions

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 296 Principles of investigation and assessment

¹ The court shall investigate the facts .

² The parties and third parties must cooperate in the tests required to establish paternity provided such tests not pose a danger to their health. The provisions concerning the parties' and third parties' right to refuse are not applicable.

³ The court decides without being bound by the requests of the parties.

Art. 297 Hearing of the parents and mediation

¹ The court hears the parents in person when ruling on matters relating to a child.

² The court may ask the parents to attempt mediation.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

does not preclude a hearing.

^{1bis} The use of electronic equipment for audio or video transmission is not permitted.²²³

² Only the information that is relevant for the decision is placed on record. This information shall be communicated to the parents or the child's welfare agent.

³ A child who has the capacity to consent may challenge the refusal to grant a hearing by filing an objection.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

The court shall consider appointing a representative in particular if:

- a. ²²⁴the parents submit different applications regarding:
 1. allocation of parental responsibility,
 2. allocation of residence,
 3. important questions concerning their personal relations with the child,
 4. sharing responsibilities for care,
 5. maintenance payments;
- b. ²²⁵the child protection authority or one of the parents so requests;
- c. based on hearing with the parents or the child or based on other reasons, the court: ²²⁶
 1. ²²⁷has serious doubts about the parents' joint applications relating to the issues listed under letter a, or
 2. is considering ordering measures for the protection of the child.

³ If the child with the capacity to consent so requests, a representative must be appointed. The child may challenge the rejection of his or her request by filing an objection.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

- a. the allocation of the parental responsibility;
- b. the allocation of residence;
- c. important questions of personal relations;
- d. sharing responsibilities for care;
- e. maintenance payments;
- f. measures for the protection of the child.

Art. 301 Notice of the decision

Notice of the decision is given:

- a. to the parents;
- b. to the child, if he or she is at least 14 years old;
- c. ²²⁹to the welfare agent, if any, to the extent the decision concerns the following issues:
 - 1. the allocation of the parental responsibility,
 - 2. the allocation of residence,
 - 3. important questions of personal relations,
 - 4. sharing responsibilities for care,
 - 5. maintenance payments,
 - 6. measures for the protection of the child.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

on which the agreement or decision is based;

- b. the amount determined for each child;
- c. any shortfall in the amount to cover the reasonable maintenance of each child;
- d. whether and to what extent the maintenance payments are modified to reflect changes in living costs.

Feedback

Chapter 2 Summary Procedure: Scope of Application ²³¹

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Abduction and under the European Convention of 20 May 1980²³⁴ on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children;

- b. the payment of a special financial contribution to cover unforeseen extraordinary needs of the child (Art. 286 para. 3 CC²³⁵);
- c. notice to debtors and the provision of security for child support outside proceedings on the parents' maintenance obligations (Art. 291 and 292 CC).

² The provisions of the Federal Act of 21 December 2007²³⁶ on International Child Abduction and the Hague Conventions on the Protection of Children and Adults are reserved.

Chapter 3 Maintenance and Paternity Actions

237

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

² If the action for maintenance has been filed together with the paternity action, the defendant must, at the plaintiff's request:

- a. deposit the costs for the birth and the suitable contributions towards the maintenance of mother and child provided paternity has been shown credibly;
- b. make suitable contributions towards the maintenance of the child support provided must be assumed and the assumption cannot be refuted by immediately available evidence.

Art. 304 Jurisdiction

¹ The court that has jurisdiction to decide the paternity action shall also decide on the deposit, the advance payment, the disbursement of deposited amounts and the refund of advances.

² In an action for maintenance, the court shall also decide on parental responsibility and other child-related issues. If a parent-child relationship is established, the parents have party status. The court may assign the roles of plaintiff and defendant.²³⁸

LAWBRARY

Law text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

(Art. 13 para. 2 and 3 of the Same-Sex Partnerships Act of 18 June 2004²⁴⁰, SSPA),

- b. the authorisation of a partner to dispose of the common home (Art. 14 para. 2 SSPA),
- c. the expansion and revocation of a partner's power to represent the partnership (Art. 15 para. 2 lt. a and para. 4 SSPA),
- d. the obligation of a partner to provide information on his or her income, assets and debts (Art. 16 para. 2 SSPA),
- e. the determination, adjustment or cancellation of monetary contributions and the regulation of the use of the home and the household effects (Art. 17 para. 2 and 4 SSPA),
- f. the obligation of the partners to cooperate in taking an inventory (Art. 20 para. 1 SSPA),
- g. the restriction of a partner's power to dispose of certain assets (Art. 22 para. 1 SSPA),
- h. the granting of deadlines for the repayment of debts between the partners (Art. 23 para. 1 SSPA).

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Chapter 2 Dissolution and Annulment of Same-Sex Partnerships

Art. 307

The provisions concerning the divorce proceedings apply by analogy to the dissolution and annulment of same-sex partnerships.

Chapter 3 Proceedings relating to Children in connection with Same-Sex Partnerships²⁴¹

Art. 307

Where a person has adopted the minor child of his or her registered partner, Articles 295–302 apply by analogy.

Title 9 Appellate Remedies

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Art. Decisions that may be
308 contested

¹ An appeal is admissible against:

- a. final and interim decisions of first instance;
- b. decisions of first instance on interim measures.

² In financial matters, an appeal is admissible only if the value of the claim in the most recent prayers for relief is at least 10,000 francs.

Feedback

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

1. revocation of the stay of enforcement (Art. 57 DEBA),
2. admission of a time-barred objection (Art. 77 para. 3 DEBA),
3. clearance to proceed (Art. 80–84 DEBA),
4. revocation or suspension of the debt enforcement proceedings (Art. 85 DEBA),
5. admission of the objection in the collection of bills of exchange (Art. 181 DEBA),
6. ²⁴³attachment (Art. 272 and 278 DEBA);
7. ²⁴⁴decisions falling under the jurisdiction of the bankruptcy or composition court under the DEBA.

Art. 310 Grounds for appeal

The appeal may be filed on grounds of:

- a. incorrect application of the law;
- b. incorrect establishment of the facts.

Section 2 Appeals, Answers to the Appeal and Cross Appeals

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

sequent service of the statement of grounds (Art. 239).

² The appealed decision must be appended to with the appeal.

Feedback

Art. 312 Answer to the appeal

¹ The appellate court serves the appeal on the opposing party for its written comments, unless the appeal is obviously inadmissible or obviously unfounded.

² An answer to the appeal must be filed within 30 days.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

cipal appeal inadmissible;

- b. ²⁴⁵...
- c. the principal appeal is withdrawn before the beginning of deliberations on the decision.

Feedback

Art. 314 Summary proceedings

¹ If the decision was rendered in summary proceedings, the deadline for filing the appeal and the answer to appeal is in each case 10 days. A cross appeal is not admissible. ²⁴⁶

² In family law disputes under Articles 271, 276, 302 and 305, the deadline for filing the appeal and the answer to the appeal is 30 days. A cross appeal is admissible. ²⁴⁷

Section 3 Effects and Procedure of an Appeal

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

² The appeal does not have suspensive effect if it is filed against a decision on:

- a. the right of reply;
- b. interim measures.
- c. directions to debtors;
- d. the security provided for maintenance.²⁴⁸

³ If the appeal is against an organisational decision, it shall always have suspensive effect.²⁴⁹

⁴ If the party concerned is threatened with not easily reparable harm, the appellate court may on request:

- a. authorise early enforcement and, if necessary, order protective measures or the provision of security; or
- b. exceptionally defer enforceability in the cases referred to in paragraph 2.²⁵⁰

⁵ The appellate court may decide before the appeal is filed. The order is automatically cancelled if no grounds for the first instance decision are requested or the deadline for the appeal expires unused.²⁵¹

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

submissions.

³ It may take evidence.

Feedback

Art. New facts and new evidence;
317 Amendment of claim

¹ New facts and new evidence are considered only if:

- a. they are submitted immediately; and
- b. they could not have been submitted in the first instance despite reasonable diligence.

^{1bis} Where the appellate court must establish the facts, new facts and new evidence may be admitted until the court begins its deliberations. ²⁵²

² The amendment of the claim is admissible only if:

- a. the conditions under Article 227 paragraph 1 are fulfilled; and
- b. ²⁵³ the amendment is based on new facts or new evidence.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

1. an essential part of the claim was not considered, or
2. essential issues of fact must still be established.

² Article 239 applies to giving notice of and providing grounds for the decision. ²⁵⁴

³ If the appellate court makes a new decision, it shall also decide on the costs at first instance.

Feedback

Chapter 2 Objections

Art. 319 Object of challenge

An objection is admissible against:

- a. final and interim decisions and decisions on interim measures of first instance that may not be challenged by an appeal;
- b. other decisions and procedural rulings of first instance:
 1. in the cases provided by the law,
 2. if they threaten to cause not easily reparable harm;
- c. undue delay by the court.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 321 Filing an objection

¹ The objection must be filed in writing and with a statement of grounds with the appellate court within 30 days of service of a decision and grounds therefor or of the subsequent service of the statement of the grounds (Art. 239).

² If the objection is against a decision taken in summary proceedings or if other first-instance decisions or procedural rulings contested, the objection must be filed within 10 days unless the law provides otherwise.²⁵⁵

³ The contested decision or procedural ruling must be enclosed if it has been served on the party.

⁴ The objection on the grounds of undue delay may be filed at any time.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

ously unbounded.

² The answer to the objection must be filed within the same period as applies to the objection.

Feedback

Art. 323 Cross objections

Cross objections are not admissible.

Art. 324 Comments of the lower court

The appellate court may invite the lower court to comment.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

forceability of the contested decision, if the party concerned is threatened with not easily reparable harm. The appellate court may decide before the objection is filed. If necessary, it shall order protective measures or the provision of security. The order is automatically cancelled if no grounds for the first instance decision are requested or the deadline for the legal remedy expires unused.²⁵⁶

Art. New applications, new facts and
326 new evidence

¹ New applications, new allegations of fact and new evidence are not admissible.

² Special provisions of law are reserved.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

³ In the event that it upholds the objection, the appellate court shall:

- a. set aside the decision or the procedural ruling and remit the case to the lower court; or
- b. make a new decision provided the appellate court is in the position to make a decision.

⁴ If an objection of undue delay is upheld, the appellate court may set a deadline within which the lower court must deal with the case.

⁵Article 239 applies to the notification and justification of the decision.²⁵⁷

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

ment of Judgments in Civil and Commercial Matters, the appellate court shall freely examine the grounds for refusal provided in the Convention.

² The objection has suspensive effect. Protective measures, in particular attachments under Article 271 paragraph 1 number 6 DEBA²⁶⁰, are reserved.

³ The deadline for filing the objection against the enforcement declaration is governed by Article 43 paragraph 5 of the Convention.

Chapter 3 Review

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

gence subsequently discovers significant facts or decisive evidence that could not have been submitted in the earlier proceedings, excluding facts and evidence that arose after the decision;

- b. criminal proceedings have established that the decision was influenced to the detriment of the party concerned by a felony or misdemeanour, even if no one has been convicted by the criminal court; if criminal proceedings are not possible, proof may be provided in some other manner;
- c.²⁶² it is claimed that the acceptance, withdrawal or settlement of the claim is invalid because of formal or substantive deficiencies;
- d.²⁶³ the party only discovers a reason for recusal after the proceedings have been concluded and no other legal remedy is available.

² A review on the grounds of a violation of the European Convention on Human Rights of 4 November 1950²⁶⁴ (ECHR) may be requested if:

- a.²⁶⁵ the European Court of Human Rights has determined in a final judgment (Art. 44 ECHR) that the ECHR or its protocols have been violated, or the case has been concluded by means of a friendly settlement (Art. 39 ECHR);
- b. compensation is not an appropriate remedy for the effects of the violation; and
- c. the review is necessary to remedy the violation.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

An application for a review must be filed in writing with a statement of the grounds within 90 days of the discovery of the grounds for review.

² The right to request a review expires 10 years after the decision comes into force, except in cases under Article 328 paragraph 1 letter b.

Art. 330 Response by the opposing party

The court shall serve the application for the review on the opposing party so that he or she may respond, unless the request is obviously inadmissible or obviously unfounded.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

of the contested decision.²⁰⁰ If necessary, it shall order protective measures or the provision of security.

Feedback

Art. 332 Decision on the review application

An objection may be filed against the decision on the application for review.

Art. 333 New decision on the merits

¹ If the court upholds the request for a review, it shall quash its earlier decision and make a new one.

² In the new decision, the court shall also decide on the costs of the earlier proceedings.

³ It shall give notice of its decision to the parties together with a written statement of grounds.

Chapter 4 Explanation and Rectification

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

provide an explanation or rectification of the decision. The request must indicate the relevant parts and the requested changes.

² Articles 330 and 331 apply by analogy. The court does not require the parties to comment when correcting typographical or arithmetical errors.

³ An objection may be filed against the decision on the request for explanation or rectification.

⁴ Notice of the explained or rectified decision shall be given to the parties.

Title 10 Enforcement

Chapter 1 Enforcement of Decisions

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

forced according to the provisions of the DEBA²⁶⁷.

³ The recognition, the declaration of enforceability and the enforcement of foreign decisions are governed by this chapter, unless an international treaty or the PILA²⁶⁸ provides otherwise.

Art. 336 Enforceability

¹ A decision is enforceable, if:

- a. it is legally binding and the court has not suspended its enforceability (Art. 315 Abs. 4, 325 para. 2 and 331 para. 2); or
- b. it is not yet legally binding, but its early enforceability has been authorised.²⁶⁹

² The court that has made the decision on enforceability shall certify the enforceability of the decision on request.

³ A decision issued without written grounds (Art. 239) is enforceable under the conditions set out in paragraph 1.²⁷⁰

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

² The unsuccessful party may ask the enforcement court to suspend enforcement; Article 341 applies by analogy.

Feedback

Art. 338 Request for enforcement

¹ If the decision may not be directly enforced, a request for enforcement must be submitted to the enforcement court.

² The applicant must establish that the requirements for enforcement apply and produce the necessary physical records.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

the unsuccessful party,

- b. at the place where the measures are to be taken; or
- c. at the place where the decision to be enforced was made.

² The court decides in summary proceedings.

Feedback

Art. 340 Protective measures ²⁷¹

The enforcement court may order protective measures, if necessary without hearing the opposing party beforehand.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

other period within which to file its comments.

³ On the merits, the unsuccessful party may only argue that matters preventing the enforcement of the decision have occurred since notice thereof was given, such as extinction, deferment, prescription or forfeiture of the right to due performance. Extinction and deferment must be proven by physical records.

Art. Enforcement of conditional
342 performance or performance
subject to counter-performance

Decisions providing for conditional performance or performance that is subject to counter-performance may not be enforced until the enforcement court has determined that the condition is fulfilled or that the counter-performance has been duly offered, rendered, or guaranteed.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

- a. issue a threat of criminal penalty under Article 292 SCC²⁷²;
- b. impose a disciplinary fine not exceeding 5,000 francs;
- c. impose a disciplinary fine not exceeding 1,000 francs for each day of non-compliance;
- d. order a compulsory measure such as taking away a movable item or vacating immovable property; or
- e. order performance by a third party.

^{1bis} If the decision contains an injunction under Article 28CC²⁷³, the enforcement court may at the request of the applicant order electronic monitoring in accordance with Article 28 CC.²⁷⁴

² The unsuccessful party and third parties must provide the required information and tolerate the required searches.

³ The person entrusted with enforcement may request the assistance of the competent authorities.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

gister, such as the land register or the commercial register, the court making the decision shall issue the required instructions to the registrar.

Feedback

Art. Damages and conversion into
345 money

¹ The prevailing party may demand:

- a. damages if the unsuccessful party does not follow the orders of the court;
- b. conversion of the performance due into the payment of money.

² The enforcement court shall determine the relevant amount.

Art. Appellate remedy for third
346 parties

Third parties may file an objection against enforcement decisions if the decision affects their rights.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

performance may be enforced in the same way
as judicial decisions if:

- a. the obligee expressly declares in the record that he or she accepts direct enforcement;
- b. the legal ground for the performance due is mentioned in the record; and
- c. the performance due is:
 1. sufficiently specified in the record,
 2. accepted in the record by the obligee, and
 3. due.

Feedback

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

- b. arising from the tenancy and lease of residential and business property or the lease of agricultural property;
- c. under the Participation Act of 17 December 1993²⁷⁶;
- d. arising from employment relations or under the Recruitment Act of 6 October 1989²⁷⁷;
- e. arising from consumer contracts (Art. 32).

Art. Records relating to
349 performance in money

An enforceable record relating to performance in money is deemed to be a title setting aside an objection under Articles 80 and 81 DEBA²⁷⁸.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

of the record, setting a deadline of 20 days for performance. The obligor receives a copy of the notification.

² If performance is not rendered within the deadline, the obligor may submit a request for enforcement to the enforcement court.

Art. Proceedings before the
351 enforcement court

¹ The obligee may contest his or her obligation to render performance only if the objection raised can be immediately proven.

² If a declaration of intent is owed, the decision of the enforcement court takes the place of the declaration. The enforcement court shall issue the required instructions in accordance with Article 344 paragraph 2.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

does not or no longer exists or that it has
been suspended.

Feedback

Part 3 Arbitration

Title 1 General Provisions

Art. 353 Scope of application

¹ The provisions of this Part apply to the proceedings before arbitral tribunals based in Switzerland, unless the provisions of the Twelfth Chapter of the PILA²⁷⁹ apply.

² The parties may exclude the application of this Part by making a declaration to this effect in the arbitration agreement or a subsequent agreement, and instead agree that the provisions of the Twelfth Chapter of the PILA apply. The declaration must be in the form specified in Article 358.²⁸⁰

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. Location of the arbitral
355 tribunal

¹ The location of the arbitral tribunal shall be determined by the parties or by the body they have designated. If no location is determined, the arbitral tribunal itself determine its location.

² If neither the parties nor the designated body nor the arbitral tribunal determine the location, the ordinary court that would have jurisdiction to decide the matter in the absence of an arbitration agreement shall decide.

³ If several ordinary courts have jurisdiction, the location of the arbitral tribunal shall be the location of the ordinary court first seised by virtue of Article 356.

⁴ Unless the parties have agreed otherwise, the arbitral tribunal may hold hearings, take evidence and deliberate at any other location.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

tions for review,

- b. to receive the arbitral award on deposit and to certify its enforceability.

² The canton where the arbitral tribunal is located shall designate a different court or a differently composed court to have jurisdiction as the sole instance for:

- a. the appointment, challenge, removal and replacement of the arbitrators;
- b. the extension of the arbitral tribunal's term of office;
- c. supporting the arbitral tribunal in all its procedural acts.

³ The competent ordinary court decides in summary proceedings other than in cases under paragraph 1 letter a.²⁸¹ Article 251 paragraph 2 applies.²⁸²

Title 2 Arbitration Agreement and Arbitration Clause²⁸³

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

disputed on the ground that the main contract is invalid.

Feedback

Art. 358 Form

¹ The arbitration agreement must be done in writing or in any other form allowing it to be evidenced by text.

² The provisions of this Part apply by analogy to arbitration clauses in unilateral transactions or in articles of association. ²⁸⁴

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

lenged before the arbitral tribunal, the tribunal shall decide on its own jurisdiction by way of an interim decision or in the final award on the merits.

² An objection to the arbitral tribunal on the grounds of lack of jurisdiction must be raised prior to any defence on the merits.

Title 3 Constitution of the Arbitral Tribunal

Art. 360 Number of arbitrators

¹ The parties may freely agree on the number of arbitrators. In the absence of an agreement, the arbitral tribunal shall comprise three members.

² If the parties have agreed on an even number of arbitrators, it is presumed that an additional arbitrator must be appointed as the chairperson.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

bitrators; the arbitrators shall then unanimously elect another person as chairperson.

³ If an arbitrator is designated by his or her function, the holder of that function who accepts the mandate is deemed to be appointed.

⁴ In matters relating to the tenancy and lease of residential property, only the conciliation authority may be appointed as arbitral tribunal.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

petent under Article 356 paragraph 2 shall proceed with the appointment at the request of one of the parties if:

- a. the parties cannot agree on the appointment of the single arbitrator or the chairperson;
- b. a party fails to designate his or her arbitrator within 30 days from being requested to do so; or
- c. the appointed arbitrators cannot agree on the appointment of the chairperson within 30 days from their appointment.

² In case of a multi-party arbitration, the ordinary court competent under Article 356 paragraph 2 may appoint all the arbitrators.

³ If an ordinary court is designated to appoint an arbitrator, it must proceed with the appointment unless a summary examination shows that no arbitration agreement exists between the parties.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

impartiality.

² This duty continues throughout the proceedings.

Feedback

Art. 364 Acceptance of office

¹ The arbitrators shall confirm acceptance of their office.

² The arbitral tribunal is constituted only when all the arbitrators have accepted their office.

Art. 365 Secretary

¹ The arbitral tribunal may appoint a secretary.

² Articles 363 paragraph 1 and 367 to 369 apply by analogy.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

ral tribunal must issue its award may be extended:

- a. by agreement of the parties;
- b. at the request of a party or of the arbitral tribunal: by the ordinary court with jurisdiction under Article 356 paragraph 2.

Feedback

Title 4 Challenge, Removal and Replacement of Arbitrators

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

b. if there is a ground for challenge in accordance with the rules of arbitration adopted by the parties; or

c. if there is reasonable doubt as to his or her independence or impartiality.

² A party may challenge an arbitrator whom that party has appointed or in whose appointment that party has participated only if the grounds for the challenge came to the attention of the party concerned after the appointment despite exercising due diligence.²⁸⁵ Notice of the reason for the challenge must be given to the arbitral tribunal and the opposing party immediately.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

given to the arbitral tribunal and the opposing party immediately.

² The new arbitral tribunal is constituted according to the procedure specified in Articles 361 and 362.

³ The parties may appoint the members of the challenged arbitral tribunal again as arbitrators.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

yet been concluded, written notice of the challenge stating the grounds must be given to the challenged member of the arbitral tribunal and the other members of the arbitral tribunal within 30 days of the date on which the challenging party becomes aware of the grounds for the challenge or could have become aware thereof had it exercised due diligence.²⁸⁶

³ The challenging party may within 30 days of filing the challenge request a decision by the body designated by the parties or, if no such body has been designated, by the state court that has jurisdiction under Article 356 paragraph 2.²⁸⁷

⁴ Unless the parties have agreed otherwise, the arbitral tribunal may continue with the arbitration during the challenge procedure and make an award without excluding the challenged arbitrator.

⁵ The decision on the challenge may be contested only once the first arbitral award has been made.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

² If a member of the arbitral tribunal is unable to fulfil his or her duties within due time or with due care, unless the parties have agreed otherwise, he or she may be removed at a party's request by the body designated by the parties or, if no such body has been designated, by the ordinary court that has jurisdiction under Article 356 paragraph 2. ²⁸⁹

³ Article 369 paragraph 5 applies to the challenge of the removal.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

² If replacement cannot be effected in this way, the new arbitrator shall be nominated by the ordinary court that has jurisdiction under Article 356 paragraph 2 unless the arbitration agreement excludes this possibility or becomes ineffective on the retirement of an arbitrator.

³ In the absence of an agreement between the parties, the newly constituted arbitral tribunal shall decide on the extent to which procedural acts in which the replaced arbitrator has participated must be repeated.

⁴ The deadline within which the arbitral tribunal must issue its award is not suspended during the replacement procedure.

Title 5 Arbitration Proceedings

LAWBRARY

Law text

Search

EN

LOGIN

LAWBRARY

LOGIN

the arbitration agreement: when a party initiates the procedure to constitute the arbitral tribunal or the preceding conciliation proceedings agreed by the parties.

2 ... 290

Feedback

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

rules,

c. according to a procedural law of their choice.

² If the parties have not regulated the procedure, it is determined by the arbitral tribunal.

³ The chairperson of the arbitral tribunal may decide on certain procedural questions if he or she is authorised to do so by the parties or by the other members of the tribunal.

⁴ The arbitral tribunal must guarantee the equal treatment of the parties and their right to be heard in adversarial proceedings.

⁵ Each party may act through a representative.

⁶ An objection to a breach of the rules of procedure must be filed immediately after it has been recognised or would have been recognisable had due diligence been exercised, otherwise it may not subsequently be claimed that the rules were breached.²⁹¹

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

evidence.

² If the party concerned does not comply with the measure ordered by the arbitral tribunal, the tribunal or a party may apply to the ordinary court for it to issue the necessary orders.²⁹²

³ The arbitral tribunal or the ordinary court may make the interim measures conditional on the payment of security if it is anticipated that the measures may cause harm to the other party.

⁴ The applicant is liable for the harm caused by unjustified interim measures. If he or she proves, however, that the application for the measures was made in good faith, the arbitral tribunal or the ordinary court may reduce the damages or relieve the applicant entirely from liability. The aggrieved party may assert his or her claim in the pending arbitration.

⁵ The security must be released once it is established that no claim for damages will be filed; where there is uncertainty, the court shall set a deadline for filing the action.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

cedural act requires the assistance of the official authorities, the arbitral tribunal may request the participation of the ordinary court that has jurisdiction under Article 356 paragraph 2. With the consent of the arbitral tribunal, the same may also be requested by a party.

³ The members of the arbitral tribunal may participate in the procedural acts of the ordinary court and may ask questions.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

themselves by one or more corresponding arbitration agreements; and

b. the asserted claims are identical or factually connected.

² Factually connected claims between the same parties may be joined in the same arbitration proceedings if they are the subject of corresponding arbitration agreements between these parties.

³ The intervention of a third party and the joinder of a person notified as a party to an action require an arbitration agreement between the third party and the parties to the dispute and are subject to the consent of the arbitral tribunal.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

another arbitration agreement or an agreement on jurisdiction.

² The counterclaim is admissible if it concerns a claim that is covered by a corresponding arbitration agreement between the parties.

Feedback

Art. 378 Advance of costs

¹ The arbitral tribunal may order the advance of the presumed costs of the proceedings and may make the proceedings conditional on the payment of the advance. Unless the parties have agreed otherwise, the arbitral tribunal determines the amount to be paid by each party.

² If one party does not pay the required advance, the other party may advance the entire costs or withdraw from the arbitration. In the latter case, the party withdrawing may initiate new arbitration proceedings for the same matter or proceed before the ordinary court.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

due by the defendant. Article 576 paragraph
2 applies by analogy.

Feedback

Art. 380 Legal aid

Legal aid is excluded.

Title 6 Arbitral Award**Art. 381** Applicable law

¹ The arbitral tribunal decides:

- a. according to the rules of law chosen by the parties; or
- b. based on equity, if the parties have authorised it to do so.

² In the absence of such choice or authorisation, it shall decide according to the law that an ordinary court would apply.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

deliberation or a decision, the others may deliberate or decide without him or her, unless the parties have agreed otherwise.

³ The award is determined by a majority decision, unless the parties have agreed otherwise.

⁴ If no majority is reached, the award is determined by the chairperson.

Art. 383 Interim and partial awards

Unless the parties have agreed otherwise, the arbitral tribunal may limit the proceedings to certain questions or prayers for relief.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

- c. the parties and their representatives;
 - d. the parties' prayers for relief or, if none, the question to be decided;
 - e. unless the parties have explicitly dispensed with this requirement: a statement of the facts, the legal considerations and, if applicable, the considerations in equity;
 - f. the conclusions on the award on the merits, as well as the amount and allocation of the costs and party costs;
 - g. the date of the award.
- ² The award must be signed; the signature of the chairperson suffices.

Art. 385 Agreement between the parties

If the parties settle their dispute in the course of the arbitral proceedings, the arbitral tribunal shall on request record the agreement in the form of an award.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

ary court that has jurisdiction under Article 356 paragraph 1.

³ At the request of a party, this court shall certify the award as enforceable.

Feedback

Art. 387 Effect of the award

Once notice of the award has been given to the parties, it has the effect of a legally-binding and enforceable judicial decision.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

- b. explain specific parts of the award;
- c. or issue a supplementary award in relation to claims made in the arbitration proceedings that were not considered in the award.

² The application must be made to the arbitral tribunal within 30 days from the discovery of the error or the parts of the award that need to be explained or amended, but no later than one year from receiving notice of the award.

³ The application does not affect the deadlines for filing appeals. A new period for filing an appeal in relation to the corrected, explained or supplemented part of the award begins from the date on which notice of the correction, explanation or supplement is given.²⁹³

Title 7 Appellate Remedies

Chapter 1 Objections

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Supreme Court Act of 17 June 2005¹, unless otherwise provided in this Chapter.

Feedback

Art. 390 Objection to the cantonal court

¹ By express declaration in the arbitration agreement or in a subsequent agreement, the parties may agree that the arbitral award may be contested by way of objection to the cantonal court that has jurisdiction under Article 356 paragraph 1.

² The procedure is governed by Articles 319 to 327, unless otherwise provided in this Chapter. The decision of the cantonal court is final.

Art. 391 Subsidiarity

An objection is only admissible after the means of arbitral appeal provided for in the arbitration agreement are exhausted.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 393 Grounds for objection

An arbitral award may be contested on the following grounds:

- a. the single arbitrator was appointed or the arbitral tribunal composed in an irregular manner;
- b. the arbitral tribunal wrongly declared itself to have or not to have jurisdiction;
- c. the arbitral tribunal decided issues that were not submitted to it or failed to decide on a prayer for relief;
- d. the principles of equal treatment of the parties or the right to be heard were violated;
- e. the award is arbitrary in its result because it is based on findings that are obviously contrary to the facts as stated in the case files or because it constitutes an obvious violation of law or equity;
- f. the costs and compensation fixed by the arbitral tribunal are obviously excessive.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

Art. 395 Decision

¹ If the award is not remitted to the arbitral tribunal or if it is not rectified or amended by the tribunal within the set deadline, the appellate court shall decide and, if the objection is approved, shall set aside the award.

² If the award is set aside, the arbitral tribunal shall make a new award consistent with the considerations taken into account in the decision to remit the case. If the tribunal is no longer complete, Article 371 applies. ²⁹⁵

³ Setting aside may be limited to certain parts of the award if the other parts do not depend on them.

⁴ If the arbitral award is contested on the grounds that the compensation and costs are obviously excessive, the appellate court may itself decide on them.

Chapter 2 Review

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

gence, subsequently discovers significant facts or decisive evidence that could not have been submitted in the earlier proceedings; excluded are facts and evidence that arose after the arbitral award was made;

- b. criminal proceedings have established that the arbitral award was influenced to the detriment of the party concerned by a felony or misdemeanour, even if no one is convicted by a criminal court; if criminal proceedings are not possible, proof may be provided in some other manner;
- c. it is claimed that the acceptance, withdrawal or settlement of the claim is invalid;
- d. ²⁹⁷ a ground for challenge under Article 367 paragraph 1 letter c only came to light after conclusion of the arbitration proceedings despite exercising due diligence and no other legal remedy is available.

² The review on the grounds of a violation of the ECHR ²⁹⁸ may be requested if:

- a. ²⁹⁹ the European Court of Human Rights has determined in a final judgment (Art. 44 ECHR) that the ECHR or its protocols have been violated, or the case has been concluded by means of a friendly settlement (Art. 39 ECHR);
- b. compensation is not an appropriate remedy for the effects of the violation; and
- c. the review is necessary to remedy the violation.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

review.

² The right to request for a review expires 10 years after the award comes into force, except in cases under Article 396 paragraph 1 letter b.

Feedback

Art. 398 Procedure

The procedure is governed by Articles 330 to 331.

Art. 399 Remit to the arbitral tribunal

¹ If the court approves the request for review, it shall set aside the arbitral award and remit the case to the arbitral tribunal for a new decision.

² If the arbitral tribunal is no longer complete, Article 371 applies.

Part 4 Final Provisions

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

making provisions:

² It provides forms for court records and party submissions. The forms for the parties must be designed in a way that they can be completed by persons who are not legally trained.

^{2bis} The Federal Council shall provide the public with information on legal costs and the possibilities of legal aid and litigation funding.³⁰⁰

³ The Federal Council may delegate responsibility for issuing administrative and technical regulations and providing forms and information to the Federal Office of Justice.³⁰¹

Art. 401 Pilot projects

¹ The cantons may carry out pilot projects with the consent of the Federal Council.

² The Federal Council may delegate competence for the approval of such projects to the Federal Office of Justice.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

application of this Code are made available, and in particular the number, type, subject matter, duration and cost of the proceedings.

Feedback

Title 2 Amendment of Legislation

Art. 402 Repeal and amendment of current legislation

The repeal and amendment of existing legislation is dealt with in Annex 1.

Art. 403 Coordination provisions

The coordination of this Code with provisions of other enactments is dealt with in Annex 2.

Title 3 Transitional Provisions

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

¹ Proceedings that are pending when this Code comes into force are governed by the previous procedural law until the close of the proceedings before the respective instance.

² Territorial jurisdiction is governed by the new law. However, jurisdiction conferred under the previous law continues.

Art. 405 Appellate remedies

¹ Appellate remedies are governed by the law in force when notice of the decision is given to the parties.

² The review of a decision notified under the previous law is governed by the new law.

Art. 406 Agreement on jurisdiction

The validity of an agreement on jurisdiction is governed by the law in force at the time of conclusion of the agreement.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

² Arbitration proceedings that are pending on the commencement of this Code are governed by the previous law. The parties may, however, agree on the application of the new law.

³ Appellate remedies are governed by the law in force when notice of the arbitral award is given to the parties.

⁴ Judicial proceedings under Article 356 that are pending on the commencement of this Code are governed by the previous law.

Chapter 2 Transitional Provision to the Amendment of 28 September 2012³⁰⁴

Art. 407

In proceedings that are pending when the Amendment of 28 September 2012 to this Code comes into force, the new law applies to procedural acts from the date on which the Amendment comes into force

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

¹ The new law applies to proceedings that are pending when the Amendment of 20 March 2015 comes into force.

² New prayers for relief that are filed as a result of the change in the law applicable are permitted; uncontested parts of a decision remain binding unless they are so closely materially connected with prayers for relief that have yet to be judged that it is reasonable to judge the entire matter.

Chapter 4 Transitional Provision to the Amendment of 19 June 2015³⁰⁶

Art. 407

¹ The new law applies to divorce proceedings that are pending when the Amendment of 19 June 2015 comes into force.

² New prayers for relief that are filed as a result of the change in the law applicable are permitted; uncontested parts of a decision remain binding unless they are so closely materially connected with prayers for relief that have yet to be judged that it is reasonable to judge the entire matter.

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

The new law applies to proceedings pending when the amendment of 14 December 2018 comes into force.

Feedback

Chapter 6 Transitional Provision to the Amendment of 25 September 2020³⁰⁸

Art. 407

The new law applies to proceedings pending when the amendment of 25 September 2020 comes into force.

Chapter 7 Transitional Provision to the Amendment of 17 March 2023³⁰⁹

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

Feedback

paragraph 1 third sentence and 2, 199, 198
 letters b^{bis}, f, h and i, 199 paragraph 3, 206
 paragraph 4, 210 paragraph 1 introductory
 sentence and letter c, 239 paragraph 1, 298
 paragraph 1^{bis}, 315 paragraphs 2-5, 317
 paragraph 1^{bis}, 318 paragraph 2, 325 para-
 graph 2, 327 paragraph 5 and 336 para-
 graphs 1 and 3 also apply to proceedings
 that are pending when the Amendment of
 17 March 2023 comes into force.

Title 4 Referendum and Commencement

Art. 408

¹ This Code is subject to an optional refer-
endum.

² The Federal Council shall determine the
commencement date.

Commencement Date: 1 January 2011³¹⁰

Annex 1

(Art. 402)

LAWBRARY

Law
text

Search

EN

LOGIN

LAWBRARY

LOGIN

The Civil Jurisdiction Act of 24 March
2000³¹¹ is repealed.

II. Amendment of current legislation

The federal acts below are amended as
follows:

...³¹²

Annex 2

(Art. 403)

Coordination Provisions

1. Coordination of the Civil Procedure Code with the new Nuclear Energy Public Liability Act

³¹³

...³¹⁴

2. Coordination of Number 19 of Annex 1 with the new NEPLA

Feedback

LAWBRARY

Law text

Search

EN

LOGIN

LAWBRARY

LOGIN

(Protection of Adults, Law of Persons and Law on Children)

316

... 317

Feedback