

Europe
Integration
Foreign Affairs
Federal Ministry
Republic of Austria

GZ BMEIA-PH.4.13.06/0002-IV.1/2018

Embassy of the Republic of the Philippines
ARES Tower, 20-21 Floor, Donau City Strasse 11
1210 Vienna

Note Verbale

The Federal Ministry for Europe, Integration and Foreign Affairs presents its compliments to the Embassy of the Republic of the Philippines and has the honor to transmit, with regard to Note Verbale No: VN-PH-90-2018 dated 14.02.2018, that the request concerning the Austrian marriage and divorce law in the annex to the current version of the Austrian Marriage Act was received as furnished.

Unfortunately, an English translation of the legal text is not available from the Austrian judicial authorities, as the respective treatises are only carried out in Austria.

The Federal Ministry for Europe, Integration and Foreign Affairs avails itself of this opportunity to renew to the Embassy of the Republic of the Philippines the assurances of its highest consideration.

Vienna, on the 26th of February 2018

Federal Ministry for Europe, Integration and Foreign Affairs
A-1010 Vienna, Minoritenplatz 8, www.bmeia.gv.at, T +43(0)50 11 50-0, DVR 0000060

Translated by: Harald Tomintz, M.A.

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Office of Legal Affairs

22 MAR 2019


JONATHAN A. HIPE
Signing Officer

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Botschaft der Republik der Philippinen
ARES Tower, 20-21 Floor, Donau City Strasse 11
1210 Wien

V e r b a l n o t e

Das Bundesministerium für Europa, Integration und Äußeres entbietet der Botschaft der Republik der Philippinen seine Empfehlungen und beehrt sich zu dortiger Verbalnote No: VN-PH-90-2018 vom 14.02.2018 mitzuteilen, dass die dortige Anfrage bezüglich zum österreichischen Ehe- und Scheidungsrecht im Anhang der geltenden Fassung des österreichischen Ehegesetzes zur Verfügung gestellt werden.

Leider steht eine englische Übersetzung des Gesetzestextes von den österreichischen Justizbehörden nicht zur Verfügung, da die jeweiligen Abhandlungen nur in Österreich durchgeführt werden.

Das Bundesministerium für Europa, Integration und Äußeres benützt diese Gelegenheit, der Botschaft der Republik der Philippinen die Versicherung seiner ausgezeichneten Hochachtung zu erneuern.

Wien, am 26. Februar 2018



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Botschaft der Republik der Philippinen
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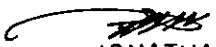
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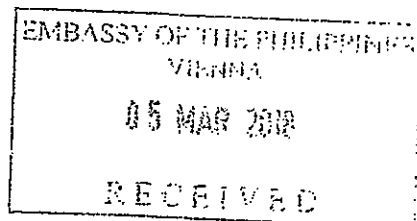
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First section

Right of marriage

A. Marital ability

§ 1.

(1) Persons who have reached the age of 18, are marriageable.

(2) The court shall declare on the basis of its application a person who has reached the age of 16 as marriageable, if the future spouse is of age and she / he / she appears to be mature for such marriage.

§ 2

Incapacity

Anyone who is legally incompetent can not marry.

§ 3

Consent of the legal representative and the legal guardian

(1) Anyone who is underage or otherwise legally incompetent requires the consent of his legal representative to enter into a marriage.

(2) He also requires the consent of the person to whom he is entitled.

(3) If the consent required under subsections (1) and (2) is refused, the court shall, at the request of the fiancé who is required to do so, replace it if there are no justified reasons for the refusal.

B. marriage bans

§ 6

Relationship

A marriage may not be concluded between blood relatives of a straight line and between full or half-bred siblings, irrespective of whether the kinship is based on marital or illegitimate birth.

§ 8th

Bigamy

No one is allowed to marry before his previous marriage has been annulled or dissolved.

§ 9. A person may not marry before their registered partnership has been annulled or dissolved.

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§ 10

Adoption to child instead

A marriage shall not be concluded between an accepted child and his offspring on the one hand, and the acceptor on the other, as long as the legal relationship established by the assumption exists.

C. Marriage

§ 15

(1) A marriage is only concluded when the marriage has taken place before a registrar.

(2) A registrar within the meaning of paragraph 1 shall also be deemed to be someone who, without being a civil registrar, has publicly exercised the office of registrar and has registered the marriage in the marriage register.

§ 17

Form of marriage

(1) The marriage is concluded by the fact that the fiancée in person and in the presence announce before the registrar the want to marry each other.

(2) The statements cannot be made under a condition or a time determination

D. Nullity of marriage

I. Nullity reasons

§ 20. A marriage is void only in cases where this is determined in §§ 21 to 25 of this Act.

§ 21

Lack of form

(1) A marriage is void if the marriage has not taken place in the manner prescribed by § 17.

(2) However, the marriage shall be deemed valid from the outset if the spouses have lived together as spouses for five years or, if one of them died before death, until their death but at least three years as spouses because at the end of the five years or at the time of the death of one spouse, the action for annulment


§ 22

Lack of legal competence or judgment ability

(1) A marriage is void if one of the spouses was legally incompetent at the time of the marriage or was in a state of unconsciousness or a temporary disturbance of mental activity.

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(2) However, the marriage shall be regarded as valid from the beginning if the spouse, after the loss of incapacitation, unconsciousness or disturbance of mental activity, indicates that he wishes to continue the marriage.

§ 23

Name marriage and nationality marriage

(1) A marriage is void if it is exclusively or predominantly for the purpose of enabling the woman to keep the family name of the man or the acquisition of the citizenship of the man, without the marriage cohabitation to be justified.

(2) However, the marriage shall be deemed to be valid from the outset if the spouses have lived together as spouses for five years or, if one of them has died before marriage, until his death but at least three years as a spouse because at the end of the five years or at the time of the death of one spouses, the action for annulment is brought.

Bigamy

§ 24. A marriage is null and void if a party lived at the time of its closure with a third person in valid marriage or registered partnership.

Relationship

§ 25. A marriage is void if it is contrary to the prohibition of § 6 contrary between blood relatives.

II. Invocation of nullity

§27

No one can invoke the nullity of a marriage unless the marriage has been annulled by court order.

§ 28

Legal standing

(1) If a marriage is null and void on the basis of § 23 of this Act, only the public prosecutor can bring an action for annulment.

(2) In all other cases of invalidity, the Public Prosecutor's Office and each of the spouses, in the case of Paragraph 24, the former spouse or registered partners may bring an action for annulment. If the marriage is dissolved, only the public prosecutor can bring an action for annulment.

(3) If both spouses have died, an action for annulment can no longer be brought

III. Consequences of nullity

§ 29. (Note: repealed by Art. II No. 3 BGBl. No. 403/1977.)

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§ 31

Propriety relations of the spouses

(1) If only one of the spouses has failed to recognize the nullity of the marriage at the time of the marriage, the relationship between the spouses and the spouses shall be applied mutatis mutandis in the case of divorce. In this case, a spouse who was aware of the nullity of the marriage at the marriage is treated as a spouse declared guilty.

(2) A spouse who has not known the nullity of the marriage at the time of marriage may declare to the other spouse, within six months after the marriage has been finally declared void, that it is responsible for the relationship between them and the consequences of the nullity should stop. If he makes such a declaration, the provision of paragraph 1 shall not apply.

§ 32

Protection of bona fide third parties

To a third party, the nullity of the marriage can only be used to object to a legal transaction between him and one of the spouses, or a valid judgment between them, if the marriage is already in effect at the time the legal transaction is made or at the moment of license declared void or the nullity was known to the third party.

E. Annulment of marriage

I. General regulations

§ 33

§ 33. The annulment of a marriage can be sought only in the cases of §§ 35 to 39 and 44 of this Act.

§ 34

The marriage is suspended by court order. It is dissolved with the legal validity of the judgment.

II. Grounds for revocation

§ 35

Lack of consent of the legal representative

(1) A spouse may seek annulment if he was limited at the time of the marriage or in the case of § 22 (2) at the time of the confirmation of his ability to work and his legal representative had not given consent to the marriage or confirmation. As long as the spouse is limited in the ability to work, only his legal representative can demand the annulment of the marriage.

(2) The annulment is excluded if the legal representative has authorized the marriage or if the spouse, has become fully able to act or has indicated that he wishes to continue the marriage.

(3) If the legal representative refuses the permit without good reason, the court of jurisdiction may replace it at the request of a spouse.

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§ 36

Misconception about the marriage or about the person of the other spouse

(1) A spouse may seek the annulment of marriage if he did not know at the time of marriage that the marriage was a marriage, or if he knew, but did not wish to give a declaration that he intended to marry, The same applies if the spouse was wrong in the person of the other spouse.

(2) The annulment is excluded if the spouse has indicated after discovery of the mistake that he intends to continue the marriage.

§ 37

Misunderstanding of circumstances affecting the person of the other spouse

(1) A spouse may seek the annulment of the marriage if, at the time of the marriage, he was mistaken about such circumstances concerning the person of the other spouse, which, knowing the facts and having properly assessed the nature of the marriage, prevented him from entering into the marriage,

(2) The annulment is excluded if the spouse has, after discovering the error, indicated that he wishes to continue the marriage, or if his request for the annulment of marriage does not appear to be morally justified in view of the previous arrangement of the spouses' marital life,

§ 38

Willful deception

(1) A spouse may seek the annulment of marriage if he has been deceived by fraudulent misrepresentation of circumstances which prevented him from entering into the marriage, having regard to the facts of the case and having properly assessed the nature of the marriage.

(2) The annulment is excluded if the deception has been committed by a third party without the knowledge of the other spouse, or if the spouse has revealed, after discovery of the deception, that he intends to continue the marriage.

(3) Due to a deceit about financial circumstances, the annulment of the marriage can not be coveted.

§ 39

Threat

(1) A spouse may seek the annulment of the marriage if it has been unlawfully determined by threat to enter into the marriage.

(2) The annulment shall be excluded if the spouse, having ceased the predicament justified by the threat, has indicated that he intends to continue the marriage.

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III. Application for annulment

§ 40

Time limit

- (1) The action for annulment can only be brought within one year.
- (2) In the cases of § 35, the period begins in the cases of §§ 36 to 38 with the time at which the entry into or confirmation of the marriage becomes known to the legal representative or the spouse acquires unlimited legal capacity in which the spouse discovers the error or deception, in the case of § 39 at the time in which the predicament ceases.
- (3) The expiry of the period shall be suspended as long as the claimant spouse is prevented within the last six months of the period for bringing an action by an unavoidable coincidence in bringing the action for annulment.
- (4) If a claimant spouse who is unfit for work has no legal representative, the time limit for bringing an action shall not expire until six months after which the spouse can bring the action for annulment on its own or in which the lack of representation ceases.

§ 41

Failure of the period of legal action by the legal representative

If the legal representative of a disabled spouse has not brought the action for annulment in time, the spouse may bring an action for annulment within six months of the discontinuance of the action.

§ 42

text

IV. Consequences of the annulment

§ 42

- (1) The consequences of the annulment of a marriage are governed by the rules governing the consequences of divorce.
- (2) In the cases of §§ 35 to 37 the spouse who knew the reason for revocation at the beginning of the marriage, in the cases of §§ 38 and 39 of the spouse, by or with whose knowledge the deception or the Threat has been perpetrated.

F. Remarriage in case of declaration of death

§ 43

- (1) If a spouse enters into a new marriage after the other spouse has been declared dead, the new marriage is not null and void because the deceased spouse is still alive, unless both spouses are married know that he has survived the death declaration.

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(2) With the closure of the new marriage, the previous marriage will be dissolved. It will remain dissolved even if the death declaration is canceled.

§ 44

text

§ 44

(1) If the deceased spouse is still alive, his former spouse may seek the annulment of the new marriage, unless at the time of his marriage he knew that the spouse declared dead had survived the declaration of death.

(2) If the former spouse makes use of the right to which he is entitled under subsection 1 and the new marriage is abrogated, he may, during his spouse's lifetime, make a new marriage only with the former marriage. For the rest, the consequences of the cancellation according to § 42 are determined.

Note for the following purpose

In proceedings brought before the court from 1 January 2005, it is also to be applied to marriages concluded prior to the entry into force of this Federal Law (see Article XXXII § 9, Federal Law Gazette I No. 112/2003).

text

G. Remarriage after dissolution of the vows by a foreign decision

§ 45. If a spouse enters into a new marriage after the dissolution of his marriage by a foreign decision, the new marriage is not null and void because the prerequisites for recognition of the foreign decision are not met. This does not apply if both spouses of the new marriage knew at the time of their marriage that the foreign decision could not be recognized domestically.

Second part

Right of divorce

A. General rules

§ 46

The marriage is divorced by court order. It is dissolved with the legal force of the decision. The conditions under which divorce can be sought are set out in the following provisions.

B. Divorce grounds

1. Divorce for negligence (misconduct)

§ 49

A spouse may desire divorce if the other has culpably destroyed the marriage so profoundly through a serious matrimonial wrongdoing or dishonorable or indecent behavior that the restoration of a

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cohabitation of their nature can not be expected. In particular, a serious marriage misconduct occurs when a spouse has broken the marriage or inflicted physical violence or serious emotional distress on the other. Anyone who has committed a misconduct can not covert the divorce if, according to the nature of his misconduct, and in particular the connection between the misconduct of the other spouse and his own fault, his divorce petition is genuinely unjustified, with a proper appraisal of the nature of the marriage.

II. Divorce for other reasons

§ 50

Behavior based on mental disorder

A spouse may desire divorce if, as a result of the other spouse's conduct, which can not be considered a marriage offense because it is based on a mental disorder, marriage is so deeply shattered that the restoration of a life-companion marriage is can not expected.

§ 51

text

§ 51

Mental illness

A spouse may desire divorce if the other is mentally ill, the illness has reached such a degree that the spiritual union between the spouses is abolished, and a restoration of that community can not be expected.

§ 52

text

§ 52

Contagious or nauseating disease

A spouse may desire divorce if the other is suffering from a serious contagious or disgusting illness and their cure or removal of the risk of infection can not be expected in the foreseeable future.

§ 54

text

§ 54

Avoiding hardening

In the cases of §§ 50 to 52, the marriage may not be divorced if the divorce request is morally unjustified. This is usually to be assumed if the dissolution of the marriage would hit the other spouses exceptionally hard. Whether this is the case depends on the circumstances, including the duration of the marriage, the age of the spouses, and the cause of the illness.

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Dissolution of a common household

§ 55.

(1) If the common household of the spouses has been suspended for three years, each spouse may seek their divorce for profound and irremediable divorce. The petition for divorce is not to be granted if the court is convinced that the restoration of a life-community corresponding to the nature of marriage is to be expected.

(2) The request for divorce shall not be granted at the request of the defendant spouse, even if the spouse seeking the divorce has caused the disorganization solely or predominantly and the divorced spouses are more severely affected by the divorce than the plaintiff's spouse rejecting the divorce petition. Consideration must be given to all the circumstances of the case, in particular to the duration of the marital partnership, the age and health of the spouses, the well-being of the children and the duration of the dissolution of the common household.

(3) In any case, the petition for divorce must be granted if the common household of the spouses has been repealed for six years.

§ 55a.

(1) If the conjugal cohabitation of the spouses has been suspended for at least half a year, both confess to the irretrievable disintegration of the marital relationship, and if there is agreement between them on the divorce, they may jointly seek divorce.

(2) The marriage may only be divorced if the spouses have a written agreement in relation to the care of their children or custody, the exercise of the right to personal contacts and the maintenance obligation in respect of their children as well as their maintenance relationships and the statutory property rights cancel each other in court in case of divorce.

(3) An agreement according to para. 2 is not required if a final and final court decision has already been given on these objects. The fact that the necessary court approval for such an agreement does not yet exist is not to be considered in the case of divorce.

C. Exclusion of divorce law

§ 56

Forgiveness

The right to divorce for negligence does not exist if it follows from the behavior of the injured spouse that he forgave the wrongfulness of the other or did not perceive it as martially destructive.

Deadline

§ 57

(1) The right to a divorce for culpability expires if the spouse does not bring the claim within six months. The period begins with the knowledge of the reason for divorce. It does not run as long as the spouses' domestic community is abolished. If the guilty spouse demands that the other party

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establish the community or bring the claim for divorce, the period shall start from receipt of the request.

(2) Divorce is no longer permissible if ten years have elapsed since the divorce.

(Note: Paragraph 3 repealed by BGBI. I No. 135/2000)

(4) For the six- and three-month period, section 40 (3) and (4) shall apply mutatis mutandis.

§ 59

Note for the following purpose

The reference to the divorce for infertility in the title and to § 58 in para. 1 was made by Art. I § 1 Z 1 StGBI. No. 31/1945 materially derogated.

§ 59

Subsequent assertion of divorce grounds in case of divorce for negligence and infertility

(1) After expiry of the time limits specified in §§ 57 and 58, a divorce reason may still be asserted during a divorce dispute if the time limit has not yet elapsed when filing the claim.

(2) Marriage offenses, on which a divorce action can no longer be established, can be asserted after the expiry of the time limits of § 57 in support of a divorce action founded on other divorces.

D. Statement of guilt

§ 60

In case of divorce due to fault

(1) If the marriage is divorced because of fault of the defendant, this shall be stated in the judgment.

(2) If the defendant has filed a counterclaim and the marriage is divorced due to fault of both spouses, both are found guilty. If the fault of one spouse is considerably more difficult than that of the other, it must be stated at the same time that his guilt predominates.

(3) Even if no counterclaim has been filed, the plaintiff's complicity shall be declared at the request of the defendant if the marriage is divorced on account of a deficiency of the defendant and he could have sued for divorce at the time of filing the claim or later. If the defendant has already lost the right to seek a divorce because of the plaintiff's fault, the claim must nonetheless be granted if that is equitable. Paragraph 2 sentence 2 applies accordingly.

§ 61

Divorce for other reasons

(1) If the marriage is divorced on complaint and counterclaim and if only one spouse is at fault, this shall be stated in the judgment.

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(2) If the marriage was divorced solely on the basis of the provisions of §§ 50 to 53 and if the defendant could have filed a complaint or later for divorce of the plaintiff at the time of filing the claim, it is also without charge of a counterclaim at the request of the defendant say that the plaintiff is at fault. If the defendant has already lost the right to seek a divorce because of the plaintiff's fault, the claim must nonetheless be granted if that is equitable.

(3) If the marriage is divorced according to § 55 and the plaintiff has caused the disorganization solely or predominantly, this shall be stated in the judgment at the request of the defendant.

E. Consequences of divorce

I. Name of the divorced woman

§ 62

Principle

The divorced woman keeps the surname of the man.

II. Maintenance

a) Maintenance obligation in case of divorce due to fault

§ 66. The spouse who is solely or predominantly indebted to the other, as far as his income from property and the income from a gainful occupation that may be expected of him in the circumstances, is not sufficient to provide adequate support according to the living conditions of the spouses.

§ 67

(1) If the spouse, alone or predominantly guilty, would jeopardize his own reasonable maintenance by granting the maintenance stipulated in § 66, taking into account his other obligations, he must pay only as much as he considers necessary and the assets and assets Employment of divorced spouses is equitable. If the debtor has to provide support for a minor unmarried child or a new spouse or registered partner, the needs and economic conditions of these persons must also be taken into account.


(2) A spouse shall be exempted from the obligation to provide maintenance under the conditions of paragraph (1) if the other person can dispose of the maintenance of the principal of his property.

§ 68

If both spouses are guilty of divorce, but no one bears the preponderant debt, then the spouse, who can not sustain himself, may be granted a contribution to his or her maintenance if and to the extent that this takes into account the needs and the assets and employment relationships of the other spouse. The contribution obligation can be limited in time. Section 67 (1) sentence 2 applies accordingly.

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§ 68a.

(1) Insofar as and as long as a divorced spouse can not reasonably be expected to be self-sustaining due to the care and upbringing of a common child, taking into account his or her well-being, the other has to provide for his own needs, irrespective of the fault of the divorce. The unacceptability of self-preservation is suspected as long as the child has not completed the fifth year of age. If the maintenance claim is determined by a court, it shall be limited in each case accordingly, beyond the fifth year of life of the youngest child in each case for a maximum of three years. If it is not possible to foresee when the divorced spouse will be able to sustain himself, due to the special circumstances of the case, in particular the child's special need of care, the court may refrain from setting a time limit.

(2) If, during the marriage, a spouse has, due to the consensual arrangement of the marital partnership, been responsible for the financial management and, if necessary, for the care and education of a common child or the care of a relative of one of the spouses, he may, owing to the resulting lack of employment opportunities, for example, because of a lack of vocational training or continuing education, the duration of the marital partnership, his or her age or health, are not expected to be wholly or partially self-sustaining, the other spouse will be responsible for the divorce regardless of the fault to grant his need for life. If the maintenance claim is determined by a court, it must be limited to three years in each case if it can be expected that the divorced spouse will then be in a position to secure his or her maintenance, in particular through reasonable employment.

(3) The maintenance claim under subsection (1) or (2) does not diminish or exist insofar as the granting of the maintenance would be unreasonable because the person in need has unilaterally committed particularly serious misconduct or grossly culpable or is for an equally grave cause, in the case of Paragraph 2 also, because the marriage took only a short time. The more weighty these reasons are, the more likely it is to require the needy to cover their maintenance with the proceeds of employment other than a decent job or from the tribe of his fortune.

(4) § 67 para. 1 applies accordingly.

b) Maintenance of divorce for other reasons

§ 69

(1) If the marriage is divorced solely for one of the reasons stated in §§ 50 to 53 and if the judgment contains a statement of guilt, the provisions of §§ 66 and 67 shall apply *mutatis mutandis*.

(2) If the marriage has been divorced according to § 55 and if the judgment contains the sentence pursuant to § 61 (3), then the defendant's spouse's maintenance claim also applies after divorce under § 94 ABGB. In any case, the maintenance claim also includes the reimbursement of contributions to the voluntary insurance of the defendant spouse in the statutory health insurance. When assessing the maintenance claim, the debtor's obligation to provide maintenance for a new spouse or registered partner shall not be taken into account unless, on consideration of all circumstances, in particular the age and health of the former and the new spouse or registered partner, that duration their common household with the debtor and the welfare of their children, on grounds of equity.

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(3) If the judgment does not contain a statement of guilt, the spouse who requested the divorce must grant the other the maintenance if and to the extent that this takes into account the needs and the assets and employment relationships of the divorced spouses and the maintenance according to § 71 Relatives of the claimant equals the equity. Section 67 (1) sentence 2 and (2) apply mutatis mutandis.

§ 69a

text

§ 69a. (1) The maintenance owed on the basis of an agreement pursuant to § 55a (2) shall be deemed equivalent to a legal maintenance insofar as it is appropriate to the living conditions of the spouses.

(2) In the absence of a legally binding agreement on spousal relationships between spouses in the event of divorce, one spouse shall provide maintenance to the other, to the extent that this is in consideration of the needs and wealth and employment relationships of the divorced spouses and the persons subject to maintenance under Section 71 Relatives of the claimant equal the equity; Section 67 (1) sentence 2 and (2) apply mutatis mutandis.

§ 69b

text

§ 69b. § 68a shall apply mutatis mutandis if the marriage has been divorced for one of the reasons specified in §§ 50 to 52 and 55 or in the case of a divorce in agreement on an effective agreement on the maintenance relationships of the spouses is missing.

c) Type of maintenance payments

§ 70

(1) Maintenance shall be granted by payment of a money supply. The amount is payable monthly in advance. The debtor must provide security if there is a risk that he will seek to escape his maintenance obligation. The nature of the security depends on the circumstances.

(2) Instead of the money supply, the beneficiary may demand a severance payment in capital if there is good cause and the obligated party is not unduly burdened with it.


(3) The debtor owes the full monthly amount even if the claimant dies during the month.

§ 71

(1) The divorced spouse who is subject to maintenance shall be liable to the relative's relatives. However, if the obligated party, taking into account his other obligations, would jeopardize his own adequate maintenance, the relatives are liable before the divorced spouse. If a divorced spouse is not entitled to a maintenance claim against the other spouse, the relatives of the claimant must provide maintenance in accordance with the general provisions on maintenance obligations.

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(2) The relatives shall also be liable if the prosecution of the spouse under maintenance obligation is precluded or considerably impeded in Germany. In this case, the claim against the spouse is transferred to the relative who has provided the support. The transfer can not be claimed to the detriment of the person entitled to maintenance.

§ 72

text

§ 72

In the past, the beneficiary may demand performance or compensation for non-performance only from the time the maintenance debtor has defaulted or the maintenance claim has become exhausted.

d) limitation and elimination of the maintenance claim

§ 73

Self-inflicted neediness

(1) A dependent who is in need of moral responsibility may only claim the need for provisional maintenance.

(2) Any additional demand caused by gross negligence on the part of the claimant does not justify a claim for increased maintenance.

§ 74

text

§ 74

Forfeiture

The claimant forfeits the right to maintenance if, after the divorce, he becomes guilty of a serious misconduct against the obligated person or if he behaves indecent or indecent against his will.

§ 75

text

Remarriage or justification of a registered partnership of the claimant

§ 75. The obligation to pay maintenance lapses with the remarriage or justification of a registered partnership of the claimant.

§ 76

Note for the following purpose

§ 76 is not applicable according to § 107.

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text

§ 76

Remarriage of the debtor

If the person remarried, the provisions of § 1604 of the German Civil Code on the Influence of the Property Code on the Maintenance Obligations apply mutatis mutandis.

§ 77

Death of the claimant

(1) The maintenance claim expires upon the death of the claimant. Only insofar as it is directed to fulfillment or compensation for non-performance in the past or refers to sums which are due on the death of the claimant, does he subsequently continue to exist.

(2) The obligated party shall bear the funeral expenses, insofar as this is equitable and the costs can not be obtained from the heirs.

§ 78

text

§ 78

Death of the debtor

(1) Upon the death of the debtor, the maintenance obligation shall pass to the heirs as inheritance obligation.

(2) The heir shall be liable without the limitations of section 67. However, the claimant must submit the reduction of the pension to an amount which, having regard to the circumstances of the heir and the earning capacity of the estate, corresponds to equitable value.

(3) A contribution obligation imposed on a spouse according to § 68 shall expire upon the death of the debtor.

§ 79

Note for the following purpose

§ 79 is not applicable according to § 107.


e) contribution to the upkeep of the children

§ 79

(1) If a divorced spouse has to give maintenance to a common child, the other person shall make an appropriate contribution to the costs of subsistence from the income of his estate and the income from his gainful employment, insofar as these are not covered by the use of the child's assets. The claim is not transferable.

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(2) If the dependent spouse is responsible for the person of the child, he may withhold the contribution for his own use for the maintenance of the child.

§ 80

text

f) maintenance contracts

§ 80

The spouses may agree on the maintenance obligation for the period following the divorce. If an agreement of this kind has been made before the divorce decree comes into force, it is not null and void simply because it has facilitated or made possible the divorce; it shall, however, be null and void if, in the context of the agreement, the spouses have asserted a divisional ground which no longer exists or no longer exist or if otherwise indicated by the content of the agreement or in other circumstances of the case that it is contrary to common customs.

III. Distribution of marital property and marital savings

Subject of the division

§ 81. (1) If the marriage is divorced, annulled or annulled, the conjugal utility and the marital savings shall be divided among the spouses. In the division, the debts that are related to marital property and marital savings are to be brought to bear.

(2) Matrimonial endowments are the movable or immovable bodily things which, during upright marital cohabitation, have served the use of both spouses; this includes the household effects and the marriage dwelling.

(3) Matrimonial savings are investments of whatever kind which the spouses have accumulated during an upright marital relationship and which, by their nature, are usually intended for sale.

§ 82

text

§ 82. (1) The division is not subject to property (§ 81), the

1. a spouse was brought into the marriage, acquired by death or given to him by a third party, Second serve the personal use of a spouse alone or the exercise of his profession, Third belong to a company or 4th Shares in a company are, unless they are mere investments.

(2) The marriage dwelling which a spouse has brought into the marriage or acquired by death or which has been given to him by a third party shall be included in the apportionment, if agreed, if the other spouse relies on their continued use to secure their life needs or if a common child has a need to be considered for their continued use. The same applies to household effects if the other spouse relies on its continued use to secure their life needs.

§ 83

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text

Allocation principles

Section 83. (1) The division shall be made in accordance with fairness. Particular attention should be paid to the weight and scope of the contribution of each spouse to the acquisition of marital property and to the accumulation of marital savings and to the welfare of the children; continue to debts, which are connected with the marital life expenditure, as far as they are not brought anyway according to § 81 in attack.

(2) Contribution shall also include the maintenance of the benefit, the participation in the acquisition, unless otherwise agreed, the management of the common household, the care and education of common children and any other conjugal assistance.

§ 84

text

§ 84. The division should be made in such a way that the spheres of life of the divorced spouses touch each other as little as possible in the future.

§ 85

text

Judicial division

§ 85. If the spouses do not agree on the division of marital property and marital savings, the court has to decide on this request.

§ 86

text

Judicial orders

§ 86. (1) In the division of matrimonial property, the court may transfer ownership of movable property or a right to expectancy and the transfer of ownership and other rights in immovable property from one spouse to another and the creation of rights in rem or legal relationships in favor of one spouse to immovable bodily matters of the other.

(2) If matrimonial property is owned by a third party, the court may order the transfer of rights and obligations relating to the property only with the consent of the owner.

§ 87

text

§ 87. (1) For the marriage dwelling, the court may, if it is used by virtue of the property or other right of one or both spouses, transfer the property or the real right from one spouse to the other or

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establish a contractual relationship order a spouse. The transfer of ownership or a real right to a marital home under § 82 (2) may exclude the spouses by agreement.

(2) Otherwise, without prejudice to any provision of a contract or statute, the court may order that one spouse, in place of the other, enter into the legal relationship underlying the use of the marital home or continue the joint legal relationship alone.

§ 88

text

§ 88. (1) If the marital home is used on the basis of an employment relationship or if the legal relationship is justified in connection with a employment relationship, the court may not issue an order regarding the use of such a dwelling without the consent of the employer or the person responsible for awarding the service dwelling Legal entity meet, though

1. the assignment of the dwelling because it serves mainly the fulfillment of the duty, could violate substantial interests of the employer or
2. the dwelling is used free of charge or for a merely insignificant fee, which is substantially below the customary standard, or
3. the apartment is provided by the employer as part of the remuneration for the services rendered.

(2) If the spouse pursuant to paragraph 1 is granted to the spouse who is not the employee, the court shall set an appropriate usage fee. The spouse's right of residence exists only as long as he does not remarry or establish a registered partnership and can not transfer or transfer it to other persons.

§ 89

text

§ 89. When dividing marital savings, the court may order the transfer of assets of whatever kind from one spouse to the other and the establishment of a right of use in an apartment in favor of a spouse.

§ 90

text

§ 90. (1) The transfer of ownership of immovable property or the justification of rights in rem shall be ordered only if a fair settlement can not otherwise be obtained.


(2) In the case of joint ownership of the spouses, the court may order only the transfer of one spouse's share of the minimum share and common home ownership to the other.

Compensation of disadvantages

§ 91. (1) If a spouse, without the express or tacit consent of the other, has not been released for at least two years prior to the bringing of the claim for divorce, annulment or annulment of the

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marriage, or if the marriage was terminated before bringing the action, at the earliest two years prior to that marriage Abolition of marital property or marital savings in a manner contrary to the arrangement of the spouses' living conditions during the marriage, the value of the missing shall be included in the apportionment.

(2) If matrimonial property or legitimate savings were contributed or otherwise used for a business in which one or both spouses owns a share, the value of the person or person employed shall be included in the apportionment. However, the allocation shall take account of the extent to which each spouse has benefited from the contribution or use and the extent to which the spousal savings contributed or used stemmed from the profits of the company. The existence of the enterprise may not be endangered by the division.

(3) Where a physical property which has served the interests of both spouses during an upright marital relationship belongs to an undertaking to which one or both spouses are entitled, then, after divorce, annulment or annulment of the marriage, only one spouse shall remain in possession of that spouse The court shall give due consideration to this in the division of marital property and marital savings in favor of the other spouse.

§ 92

text

debts

§ 92. With regard to the debts mentioned in § 81 (1) and § 83 (1), the court may determine which spouse is obliged to pay in the internal relationship.

§ 93

text

Implementation of the division

§ 93. In its decision, the court must also make the necessary arrangements for its execution and determine the more precise circumstances, especially in terms of time, for their fulfillment. If there are expenses connected with the execution of the decision, the court shall, at its reasonable discretion, decide which spouse to bear.

§ 94

text

compensation

Section 94. (1) To the extent that a division under the above provisions can not be obtained, the court shall order one spouse to pay the other a reasonable compensation.

(2) The court may order a deferral of the payment or its payment in partial amounts, effectively against seizure, if this is economically necessary for the counterparty and reasonable for the equalizer.

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Expiry of the allocation claim

§ 95. The right to the division of marital property and marital savings expires if he is not recognized by a contract or settlement within one year after the entry into force of the divorce, annulment or annulment of marriage or judicially asserted.

§ 96

text

Transfer of the division claim

§ 96. The right to divide marital property and marital savings is inheritable, transferable and pledgeable, whether living or on death, as far as he has been recognized by contract or settlement or has been asserted in court.

§ 97

text

contracts

§ 97. (1) Agreements that regulate in advance the allocation of marital savings or the division of the marital home require the form of a notarial act in order to be legally valid. Agreements which regulate in advance the division of the other legitimate assets must be in writing.

(2) The court may deviate from a previously agreed agreement on the distribution of matrimonial savings and marital property other than marital dwellings only if the agreement, taken as a whole, considers part of the assets to be included in the apportionment at the time of the apportionment decision unreasonably disadvantaged, so that the tumbler is unreasonable.

(3) The court may only deviate from a previously concluded agreement on the use of the marital home by a spouse if the other spouse or a common child can not sufficiently cover his or her life needs or suffer a significant deterioration in his living conditions.

(4) If the court deviates from an agreement concluded in advance, particular consideration shall be given to the structure of marital relationships, the duration of the marriage and the extent to which the agreement preceded legal advice and the form in which it was concluded.

(5) Paragraphs 1 to 4 shall not apply to such agreements concluded by the spouses in connection with the proceedings for divorce, annulment or annulment of marriage.

Liability for loans

§ 98. (1) If the court decides (§ 92) or if the spouses agree (§ 97 (5), if applicable § 55a (2)), whichever party is obliged to pay credit obligations to which both are liable, Thus, upon request, the court shall pronounce, with effect for the creditor, that the spouse who is obliged to pay internally becomes the main debtor and the other is the default guarantor. This application must be made in the time limit under § 95.

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(2) Subject to § 1356 of the Austrian Civil Code (ABGB), the default guarantor pursuant to paragraph 1 may be prosecuted only for the amount which can not be recovered by the principal debtor within a reasonable period of time, even though the creditor is against him after obtaining an execution order

1.

Carriage or salary execution and

2.

Execution on a property known to the creditor of the principal debtor, which obviously provides cover for the claim, as well as

3.

Collateral available to the creditor.

If the execution title had to be obtained abroad, or if the execution measures referred to had to be carried out abroad, it would not be necessary to do so unless it was possible or unreasonable for the creditor.

(3) In addition, the guarantor, to whom the legal dispute against the principal debtor has been announced in good time (§ 21 ZPO), can only counter the creditor with objections that are not justified in his person, insofar as he can also levy the principal debtor.

§ 102

text

Third section

Special provisions for Austria

B. Additional requirements

§ 102. (1) Children who are unable to work are to be understood as children under the age of seven and persons over the age of seven who do not have the use of reason.

(2) Under-restricted persons are minors over the age of seven and persons to whom a guardian has been appointed pursuant to § 268 ABGB.

§ 104

text


§ 104

Section 43 (2) sentence 2 applies in the event that the declaration of death is annulled or corrected by court order.

§ 107

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text

§ 107. §§ 76 and 79 are not applicable.

D. Transitional Provisions

I. Separation of marriage according to gang

§ 109

The separation of the marriage according to the gang according to the previous laws is considered a divorce of marriage according to the provisions of this law. The separation of the marriage according to the gang, the judicial solution of a marriage according to the former Burgenland marriage law and the enforceable declared ecclesiastical injunction on the indulgence of an unfulfilled marriage is equal.

§ 110

text

§ 110

In a divorce proceeding under this law, a judgment given on the basis of the previous law does not preclude the assertion of such facts which, according to earlier law, did not justify a separation of the marriage from the bond.

§ 111

text

§ 111

(1) For the benefit of the maintenance of separated spouses, if nothing has been agreed, the provisions of this Law on the Maintenance of Divorced Spouses shall apply in the future. In this case, the statement of guilt contained in the judgment of separation shall be taken as the basis. The specified regulations do not apply if both spouses are found guilty. If both spouses are found guilty and the divorce proceedings have been instituted at the request of both spouses, one spouse shall provide maintenance to the other, if and to the extent necessary for the divorced spouses and the surviving spouse according to § 71 Relatives of the equals equals. Section 67 (1) sentence 2 and (2) shall apply mutatis mutandis. A judgment given prior to the entry into force of this Act does not preclude a new regulation of maintenance.

(2) The provisions of para. 1 shall also apply to enforceable ecclesiastical injunctions on the indulgence of an unfulfilled marriage. If a decision on fault has not yet been taken, then it is entitled to the courts, which have to decide on property rights claims.

§ 112

text

§ 112

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(Note: no subject)

§ 113

Note for the following purpose

§ 113 is obsolete due to the passage of time.

text

§ 113

The periods of § 57 terminate at the earliest six months, the periods of § 58 at the earliest one year after entry into force of this law.

II. Divorce marriage from the table and bed

§ 114

The effect of the divorce of a marriage from table and bed is not affected by the entry into force of this law. The divorce of the marriage of table and bed is the separation of the marriage of table and bed after the previous Burgenland matrimonial law equal.

§ 115

text

§ 115

(1) Each spouse of a marriage divorced from a table and a bed may submit a petition to divorce the marriage within the meaning of this Act. Responsible is the district court, in whose district one of the spouses has its general jurisdiction in disputes in the country Austria, if there is no such, the district court Innere Stadt in Vienna. An action for divorce of the marriage under the provisions of this Act is excluded.

(2) In accordance with the provisions of the procedure, the application shall be heard and decided on except litigation. The application must be granted if it is established that the spouses have not reunited. An examination of the fault does not take place. The awarding decision is equivalent to a divorce judgment within the meaning of this law. One copy of the resolution is to be transmitted to the office of the Reich Governor in Austria. This causes the comment in the marriage register (marriage matriculation).

(3) As far as financial circumstances are concerned, the rules governing divorce from the bed and the table remain. However, for the benefit of maintenance, the unanimously divorced spouses, if nothing has been agreed, for the future shall apply the provisions of this Act. This is based on the judgment contained in the divorce decree. A judgment given prior to the entry into force of this Act does not preclude a new regulation of maintenance.

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(4) The spouse who is not divorced from his fault of the table and bed retains the statutory right of inheritance. The spouse of a later marriage is only entitled to it if a spouse from the previous marriage does not exist or if he is not entitled to a right to inherit.

(5) Nothing shall be changed in a claim (entitlement) to a benefit by virtue of a law, by-laws or contract of a spouse. A waiver of benefit is effective if it has been declared to the spouse or spouse of the subsequent marriage or the place called to instruct the spouse's benefits and rest; an explicit acceptance of the waiver is not required.

§ 116

text

§ 116

The finding of an adultery in a judgment on divorce of the marriage of table and bed has the same effect as after § 9 the finding of an adultery in a divorce judgment.

§ 117

Note for the following purpose

§ 117 is obsolete due to the passage of time.

§ 117

(1) Any pending divorce proceedings for bed and table marriage shall continue as divorce proceedings under the provisions of this Act if the request is subsequently amended. A new ground of divorce within the meaning of this law can still be asserted. Both are also admissible in appeals. Otherwise the claim should be dismissed.

(2) Pending applications for a consensual divorce between a table and a bed must be rejected.

§ 118

text

III. Invalidation of the marriage

§ 118

(1) The validity of a marriage concluded prior to the entry into force of this Act shall be governed by the previous laws. For the marriages concluded before 1 May 1934 before a priest of the Catholic Church, only the regulations that came into effect before that day are valid. They are also relevant if the spouses of a marriage completed before the state marriage body have renewed their marriage declaration after April 30, 1934 before a Catholic priest.

(2) If the reason for the invalidity is similar to one of the reasons justifying the annulment of marriage under this Act, the provisions of this Law on the annulment of marriage shall apply. The deadline for the annulment ends at the earliest one year after the entry into force of this Act.

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(3) A marriage invalid under previous laws shall be deemed to be valid from the beginning if the spouses lived together as spouses on 1 April 1938 and the reason on which the invalidity is based does not constitute an annulment under the provisions of that law could lead to the annulment of the marriage.

Section 119

text

Section 119

If a marriage was declared invalid before the entry into force of this Act, if it was denied the civil legal effects, or if an ecclesiastical invalidity decision was declared enforceable, this shall be deemed to be a declaration of invalidity within the meaning of this Act. § 31 is not applicable.

§ 120

Note for the following purpose

§ 120 is obsolete due to the passage of time.

text

§ 120

(1) A pending invalidity proceeding (procedure for withdrawing the effects of civil law) shall continue as a procedure for annulment or annulment of marriage only if a party already involved in the proceedings who would be entitled to initiate such proceedings in accordance with the provisions of that law so requests , Otherwise, set the procedure.

(2) An ecclesiastical invalidation decision can no longer be declared enforceable.

IV. Special Provisions on Marriages Concluded with Forbearance of the Matrimonial Marriage

§ 121

(1) A marriage concluded with indulgence from the marriage obstacle of the marriage bond and not already declared legally invalid shall be deemed to be a marriage valid from the beginning, unless, on the basis of an application submitted before 1 January 1939, it is established by court order On 1 April 1938, spouses no longer lived together as spouses. In this case, the marriage is annulled. If a spouse died before 1 April 1938, the day of death of the spouse takes the place of this day. The annulment is not precluded by the fact that the marriage should have been validated by the courts before the entry into force of this law.

(2) The application may be made by either spouse or by the spouse of the previous marriage. Responsible is the district court, in whose parish the last common residence of the spouses of the later marriage in the country Austria is located, if it is missing at such, the district court Innere Stadt in Vienna. The court shall, in accordance with the provisions of the procedure, bargain and decide upon disputes.

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(3) Pending proceedings to investigate the validity of a marriage made with indulgence by the marriage party of the marriage bond on grounds of this obstacle to marriage must be discontinued.

§ 122

text

§ 122

(1) If, in the period of § 121, an application is not filed or if it is finally rejected, then the earlier marriage, from whose bonds indulgence was granted, shall be deemed to have been divorced from the later marriage than within the meaning of this Act.

(2) If the former marriage, from whose bonds indulgence was granted, is divorced from the table and bed, the provisions of § 115 (3) to (5) shall apply. These rules shall apply mutatis mutandis to cases in which the earlier marriage, of whose bonds indulgence was granted, was not divorced from the table and bed. In such cases, unless otherwise agreed, the provisions of this Act shall apply to the provision of maintenance in the future. The decision is open to the courts which have to decide on property rights, whereby it is decisive for the question of fault which of the spouses has set an offense, which would be considered as divorce reason. If the innocence of both spouses is determined, then § 111 (1) sentences 4 and 5 shall apply mutatis mutandis.

§ 123

(1) Resolutions on the basis of applications under § 121 shall be served on the persons entitled to petition.

(2) A copy of the legally binding resolutions shall be communicated to the office of the Reich Governor in Austria. It states that, if the application was accepted, the annulment of the marriage made with forethought by the marriage party of the marriage bond, if the application was dismissed, is annulled in the marriage register within the meaning of this law.

§ 124

Note for the following purpose

§ 124 is obsolete due to the passage of time.

text

§ 124

(1) At the District Court Innere Stadt in Vienna, a collection point shall be set up for the applications submitted pursuant to section 121 and for the resolutions passed on the basis of these requests. A copy of each application must be sent to the collection center and a copy of each legally binding decision on such a request.

(2) The details of the collection center are regulated by the President of the Higher Regional Court of Vienna.

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(3) Everyone can inspect the collection. Upon request, the District Court of Innere Stadt in Vienna must issue a written confirmation that an application has not been submitted by 1 January 1939, or that an application has been received and which final decision has been taken.

§ 125

Note for the following purpose

§ 125 is obsolete due to the passage of time.

text

§ 125

(1) If, before 1 January 1939, an application was not filed in a case of § 121, the spouse who has concluded the later marriage with the indulgence of the marriage party and if he is no longer alive has his spouse from the later marriage, the obligation to apply without delay to the District Court of the Inner City in Vienna, the notice of divorce of the former marriage according to this law in the marriage register (marriage matriculation) to arrange. If the prerequisites for this registration are met, the District Court of Innere Stadt in Vienna must forward the application with a confirmation confirming this to the Office of the Reichsstattheater for further disposition. The spouse of the previous marriage is also entitled to submit an application. The application must be accompanied by a marriage certificate for both marriages and a certificate of indulgence from the bond of the previous marriage, or at least details of the marriage and indulgence.

(2) A spouse who culpably fails to comply with the obligation incumbent on him under subsection (1) commits an offense and is punished by the courts for money of up to one hundred and fifty Reichsmarks or arrest of up to six weeks.

§ 126

Note for the following purpose

§ 126 is obsolete due to the passage of time.

text

§ 126

Entries, minutes and enclosures in accordance with §§ 124 and 125 are free of charge.

§ 127

text

§ 127

If a marriage concluded with forbearance by the marriage party has been annulled because of this obstacle, the spouses shall, if nothing has been agreed, be obliged to maintain it under the same conditions as if the marriage were validly closed and divorced would have been. For the period prior to the entry into force of this law, maintenance can not be demanded under this provision. The

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court which has to decide on the property rights has to determine whether a spouse committed guilty behavior for the duration of the marriage, which could be considered a divorce ground if the marriage were valid. Section 111 (1) sentences 4 and 5 shall apply mutatis mutandis.

§ 128

text

V. Repeal of previous regulations

§ 128

Provisions of Austrian law concerning objects regulated by this Act shall cease to be effective upon the entry into force of this Act.

§ 129

text

Fourth section

final provisions

§ 129

This law comes into force on 1 August 1938. The provisions of § 112 (2) and (3), § 117 (2), § 120 (2) and § 121 (3) shall come into force on the day following the promulgation.

§ 130

text

§ 130

(1) Where reference is made to provisions that are repealed or amended by this Act or the provisions issued pursuant to this Act, the referral shall receive its content from the corresponding new regulations.

(2) A referral shall be deemed equal if the applicability of the provisions referred to in paragraph 1 is tacitly assumed.

§ 131

text

Entry into force and transitional provisions from 1 July 2018

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