



MINISTRY OF FOREIGN AFFAIRS AND TRADE
LEGAL DEPARTMENT

KKM/6727-1/2018/Adm

NOTE VERBALE

The Ministry of Foreign Affairs and Trade of Hungary presents its compliments to the Embassy of the Republic of the Philippines in Budapest, and – with reference to the Note Verbale No. MFTP-18/2018 of the Esteemed Embassy – has the honour to communicate the following:

The issues related to family law, marriage and divorce are regulated in Hungary by Book 4 of the binding Civil Code (Law No. V. of 2013). A copy of the aforementioned legislation in English language has been annexed to the present Note (22 sheets).

The Ministry of Foreign Affairs and Trade of Hungary avails itself of this possibility to renew the Embassy of the Republic of the Philippines in Budapest the assurances of its highest consideration.

Budapest, on the 3rd of March 2018.



Embassy of the Republic of the Philippines

B u d a p e s t

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**BOOK FOUR
FAMILY LAW**

**PART ONE
PRINCIPLES**

Section 4:1

[Protection of the institution of marriage and the family]

- (1) The institution of marriage and family life is protected by law.
- (2) The provisions of this Act shall be applied with a view to reconciling family life and individual interests.

Section 4:2

[Protection of the interests of children]

- (1) In family law the interests and rights of children merit enhanced protection.
- (2) All children have the right to grow up in their own family.
- (3) If raising a child in his own family is not an option, all possibilities should be explored to find ways for the child to grow up in a family environment and to maintain prior family ties.
- (4) The right of children to grow up in their own families, or alternatively in a family setting, and to maintaining prior family ties may be limited in cases defined by law, under exceptional circumstances and in the best interests of the child.

Section 4:3

[Principle of equality of spouses]

In family life and in family affairs spouses shall be considered equals; they shall have equal rights and obligations.

Section 4:4

[Principle of fairness and protection of the weaker party]

Family relations should be resolved under the principle of fairness and in due consideration of the protection of the party who is considered weaker in standing up for his/her interests.

**PART TWO
THE INSTITUTION OF MARRIAGE**

**TITLE I
THE ACT OF MARRIAGE**

Section 4:5


[Contracting marriage]

- (1) Marriage shall be considered contracted if a man and a woman together appears before the registrar in person and declare their intention to marry. Such declaration cannot be made subject to a condition or time limit.
- (2) After the exchange of wedding vows, the registrar shall declare the parties united in marriage, and shall record the fact of marriage in the marriage registry.
- (3) Marriage shall not be contracted in the absence of the conditions set out in Subsection (1). A non-existent marriage shall be treated as if it has never been contracted.

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Section 4:6

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[Establishing the existence or non-existence of marriage]

(1) If the existence or non-existence of a marriage cannot be clarified in administrative proceedings, an action for determining the existence or non-existence of a marriage may be brought by either of the spouses, the public prosecutor, or by any person who has a legal interest therein.

(2) The action shall be brought by a spouse against the other spouse, or by the public prosecutor or a third party authorized to bring action against both spouses. If the party against whom the action is to be brought is no longer alive, the guardian ad litem appointed by the court shall be named as the defendant in the action.

(3) The judgment on the existence or non-existence of the marriage applies to all parties involved.

Section 4:7

[Actions prior to marriage]

(1) Before marriage both parties to the marriage shall declare in front of the registrar that no legal impediment exists as to their marriage, and they shall verify that the legal requirements for their marriage are satisfied.

(2) The registrar shall schedule the marriage for a date thirty days after the time of receipt of the notification of intent to marry. In justified cases, the notary may grant exemption from that time limit.

(3) Where either of the parties to the marriage suffers in a terminal illness, the statement of the parties shall suffice in place of verifying all legal requirements of marriage, and marriage may be contracted immediately upon notification.

Section 4:8

[Formalities of marriage]

(1) Marriage shall take place publicly, in an office of the local authority before two witnesses.

(2) At the request of the parties the marriage may take place privately, or - subject to authorization by the notary - in a place other than the office of the local authority, if deemed appropriate.

**TITLE II
ANNULMENT OF MARRIAGE**

**Chapter I
Causes of Annulment of Marriage**

Section 4:9

[Legal age for marriage]

(1) The marriage of a minor shall be considered void if entered into without the prior consent of the guardian authority.

(2) In cases provided for by law, the guardian authority may authorize the marriage of a minor of limited legal capacity over the age of sixteen years.

(3) The guardian authority shall interview the parent or guardian before deciding on the granting or refusal of the authorization. If the parent has no authority to exercise parental custody in major issues relating to the child's affairs, or if his whereabouts are unknown or if any insurmountable obstacles exist, the aforesaid interview is not required.

(4) A marriage entered into without the guardian authority's permission or before the age of sixteen years shall become valid after six months following the date of the spouse reaching legal age with retroactive effect to the date of marriage, if the spouse affected does not challenge the existing marriage within such preclusive period, or if the court dismisses - at his request - any action previously brought on the same grounds by another person.

Section 4:10

[Marriage of an incompetent person placed under guardianship]

(1) The marriage of any person under guardianship invoking fully limited legal competency at the time of marriage shall be invalid.

(2) The marriage of a person under guardianship shall become valid after six months following the date of termination of guardianship with retroactive effect to the date of marriage, if the spouse who is the reason for invalidity does not challenge the existing marriage within such preclusive period, or if the court dismisses - at his request - any action previously brought on the same grounds by another person.

Section 4:11

[Marriage of an incompetent person]

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- (1) The marriage of any person who was legally incompetent at the time of marriage shall be invalid.
- (2) The marriage shall become valid after six months following the date of the spouse regaining legal competency with retroactive effect to the date of marriage, if the spouse who is the reason for invalidity does not challenge the existing marriage inside such preclusive period.

Section 4:12

[Family ties, relations]

- (1) Marriage shall be invalid if it takes place:
 - a) between relatives in direct line;
 - b) between siblings;
 - c) between a person and the biological descendant of his/her sibling; and
 - d) between the adoptive parent and the adopted person during the existence of the adoption.
- (2) The marriage between a person and the biological descendant of his/her sibling shall not be considered invalid if the notary grants an exemption from the impediment to marriage before or after the marriage takes place. An exemption may be granted if the matrimonial union of the spouses does not jeopardize the health of their children to be born as a result of such relation.

Section 4:13

[Existing marriage]

- (1) Marriage shall be declared invalid if one of the parties to the marriage is already married.
- (2) The latter marriage shall become valid from the date of dissolution of the previous marriage. If the court declared the previous marriage annulled, the latter marriage shall become valid retroactively from the date when it took place.

Chapter II
Annulment of Marriages

Section 4:14

[Annulment of a marriage]

- (1) A marriage shall be considered annulled upon the act of a court in voiding the marriage in an action brought for such reason (hereinafter referred to as „action for annulment“).
- (2) The judgment for annulment of the marriage applies to all parties involved.
- (3) An annulled marriage shall be subject to the legal effects set out in this Act.

Section 4:15

[Right to bring an action for annulment]

- (1) Actions for annulment may be brought during the existence or after the dissolution of the marriage.
- (2) Unless otherwise provided for in this Act, an action for annulment may be brought by either of the spouses, the public prosecutor, or by any person who has a legal interest in the nullity of the marriage.
- (3) In the event of death of the person who brought the action, any person with a vested interest may take his/her place in the action.

Section 4:16

[Limitation of the right to bring an action]

- (1) If a marriage was declared invalid due to the absence of permission to marry for reason of minority or for reason of guardianship the spouse who was the reason for invalidity may bring action for annulment after reaching legal age, or after the termination of guardianship. The action for annulment may be brought within six months from the time of reaching legal age, or from the time of termination of guardianship.
- (2) An action for annulment may be brought on the grounds of incompetency at the time of marriage by the spouse who was legally incompetent at the time of marriage. The action for annulment may be brought within six months from the time of regaining legal competency, as from the day when legal competency was in fact re-established. In the event of the spouse's death before regaining legal competency, the public prosecutor may bring action for annulment of the marriage within six months from the date of the spouse's death.
- (3) The deadlines specified in Subsections (1)-(2) shall apply with prejudice.
- (4) If the spouse having exclusive right to bring action under Subsections (1)-(2) dies, any person who has the right to bring an action for annulment may join the action in his/her place.

Section 4:17

[Exercising the right to bring action]

- (1) An action for annulment shall be brought by the entitled party in person.
- (2) Any spouse whose capacity in legal actions has been partially limited may bring action without the consent of his/her legal representative.
- (3) If the entitled party is incompetent, the action may be brought in his/her name by the legal representative upon the guardian authority's consent.

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[Respondents in actions for annulment]

The action for annulment shall be brought by a spouse against the other spouse, or by the public prosecutor or a third party authorized to bring action against both spouses. If the party against whom the action is to be brought is no longer alive, the guardian ad litem appointed by the court shall be named as the defendant in the action.

Section 4:19

[Validity of marriages]

The provisions pertaining to actions for the annulment of marriages shall apply mutatis mutandis to actions for the validity of marriages.

**TITLE III
TERMINATION OF MARRIAGES**

Section 4:20

[Cases of termination of a marriage]

(1) Marriage shall cease to exist:

- a) in the event of the death of one of the spouses;
- b) if dissolved by court order.

(2) The marriage shall be considered terminated if the other spouse re-married - if the registry entry on the spouse's death or the court ruling declaring the person in question dead or on the legal presumption of death is abolished upon the latter marriage - provided that neither of the parties to the marriage had been aware that the death did not occur.

(3) In the cases provided for in Paragraph a) of Subsection (1) and in Subsection (2) hereof, the date of dissolution of the marriage shall be the day shown as the date of death on the death certificate or in the relevant court decision. In the case of Paragraph b) of Subsection (1) the marriage shall be considered terminated on the effective date of the final judgment granting divorce.

Section 4:21

[Dissolution of marriage]

(1) The court shall dissolve the marriage at the request of either of the spouses, in the event of breakdown of the marriage due to irreconcilable differences. The marriage shall be considered to have broken down if the relationship of the spouses has been destroyed and there is no reasonable expectation of reconciliation judging from the events that led to destruction of their life as a couple, or based on the length of their separation.

(2) The court shall dissolve the marriage irrespective of what is contained in Subsection (1), if so requested by the spouses based on their mutual agreement reached without undue influence reflecting their final intent.

(3) Dissolution of the marriage under Subsection (2) should be possible if the spouses agreed upon parental custody in connection with their common child, including visitation rights between the separated parent and the child, the maintenance of the child, use of the spouses common home, and also on spousal support where applicable, and if the court sustained their settlement agreement.

(4) If the spouses agreed to exercise parental supervision jointly, no agreement is required in terms of visitation rights, however, the child's home must be specified.

(5) The dissolution of marriage shall be carried out in consideration of the best interest of the common child.

(6) In exercising parental supervision, in the relationship between parent and child and in making arrangements for the maintenance of the child, the best interest of the child must be given priority.

Section 4:22

[Mediation]

Before filing for divorce, or during the divorce action the spouses shall have access to mediation - of their own accord or by recommendation of the court - attempting to reconcile their differences or to settle any disputes they may have in connection with the divorce by way of an agreement. The agreement reached in conclusion of the mediation process may be fixed in a court settlement.

Section 4:23

[Bringing action for the dissolution of marriage; effect of divorce]

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- (1) An action for the dissolution of marriage shall be filed by a spouse against the other spouse, in person.
- (2) Any spouse whose capacity in legal actions has been partially limited may also bring action without the consent of his/her legal representative.
- (3) If the spouse is incompetent, the action may be brought in his/her name by the legal representative upon the guardian authority's consent.
- (4) The decree of divorce applies to all parties involved.

TITLE IV PERSONAL RELATIONS OF SPOUSES

Chapter III *General Provisions*

Section 4:24

[Obligation of cooperation and support]

- (1) Spouses must be loyal and faithful to each other; they shall cooperate in their common goals and shall support one another.
- (2) In cases defined by law, the obligation of support shall remain in force after the dissolution of the marriage.

Section 4:25

[Collective and individual power of decision]

In family life and in family affairs spouses shall make decisions collectively, in their personal affairs the spouses shall decide themselves, in the best interest of the family, taking also into account the interest of their children and their own.

Section 4:26

[Choosing a home]

Spouses shall choose their home jointly, in agreement with each other.

Chapter IV *Married Names*

Section 4:27

[Provisions on surnames in marriage]

- (1) Upon marriage, the wife shall have the option:
 - a) to keep her birth name, or her name immediately before the time of marriage;
 - b) to bear her husband's full name with an indication of marital status, possibly with her name immediately before the time of marriage attached;
 - c) to bear her husband's surname with an indication of marital status and with her name immediately before the time of marriage attached; or
 - d) to bear her husband's surname with her own forename.
- (2) Upon marriage, the husband shall have the option:
 - a) to keep his birth name, or his name immediately before the time of marriage; or
 - b) to bear his wife's surname with his own forename.
- (3) Upon marriage, the husband and the wife may choose to use both of their surnames merged together as their married name, with their own forename attached. The surname part of a merged married name may consist of two segments at most.
- (4) In the cases provided for in Paragraphs *b*-*d*) of Subsection (1), Paragraph *b*) of Subsection (2) and in Subsection (3) hereof the spouses shall use a common married name.
- (5) Subject to the exception set out in Subsection (3), only one of the parties to the marriage may use the other's surname as a married name.
- (6) The parties to the marriage may agree as to the use of name under Subsections (1)-(3). In the absence of an agreement, the spouses shall continue to use their name from before the marriage, except if the wife uses the married name in Paragraph *b*) or *c*) of Subsection (1).


Section 4:28

[Provisions on surnames after termination of marriage by dissolution or annulment]

- (1) Following the dissolution or annulment of marriage, the former spouses shall continue to use the name used during their marriage. If either of them wishes to do otherwise, he/she may so notify the registrar following the dissolution or annulment of marriage. Even in this case the ex wife shall not be able to use her ex husband's name with an indication of marriage.

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(2) The court may - at the former husband's request - ban the former wife from using a surname with an indication of marital status, if the wife is sentenced to imprisonment by final verdict for an intentional criminal offense.

(3) If re-married, the wife and the husband shall be entitled to retain the married name from his or her previous marriage, with the exception that the wife shall not use her ex husband's name with an indication of marital status, and this right shall not be reinstated after the termination of latter marriage either.

TITLE V SPOUSAL SUPPORT

Section 4:29

[Entitlement for maintenance]

(1) Following the termination of matrimonial relationship, either spouse shall be entitled to demand maintenance from his/her spouse, or ex spouse in the case of divorce, if unable to support him/herself for reasons beyond his/her control.

(2) If the spouse or former spouse develops the need for support after a period of five years following the termination of matrimonial relationship, maintenance may be demanded in cases of exceptional circumstances.

(3) If the matrimonial relationship of the spouses lasts for less than one year, and their marriage did not produce a child, the former spouse shall be entitled to maintenance - if in need - for a duration corresponding with the length of their marriage. In cases of exceptional circumstances, the court may order maintenance payments for a longer period of time.

Section 4:30

[Undeserving maintenance]

(1) A spouse or former spouse shall be considered unworthy of maintenance:

a) if the irretrievable breakdown of their marriage is attributable to his/her gross misconduct or reprehensible lifestyle; or

b) if he/she engaged after the termination of matrimonial relationship in any conduct intended to do harm to his/her spouse, former spouse or their any resident family member.

(2) In determining unworthiness, the actions of the spouse or former spouse invoking it shall be taken into consideration.

Section 4:31

[Ability to provide maintenance]

A person shall not be obligated to support his/her spouse if this would seriously jeopardize his/her ability to provide for him/herself or for his/her child.

Section 4:32

[Agreement to provide lump-sum maintenance]

By agreement of the spouses executed in an authentic instrument or in a private document countersigned by an attorney, the spouse subject to maintenance obligation shall meet this obligation by providing assets of kind value or in a lump-sum payment. In that case the spouse to whom maintenance is provided shall not make any maintenance claim in the future, even if otherwise made eligible by this Act.

Section 4:33

[Maintenance of relatives]

The amount of maintenance, the means of providing and the duration such maintenance, including any changes thereof, the enforcement of any maintenance claim retroactively, the cessation of right to maintenance and the termination of maintenance shall be governed by the common provisions on the maintenance of relatives, with the proviso that the right to spousal support shall cease if the entitled party re-marries or enters into a domestic partnership.

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TITLE VI
RIGHTS IN PROPERTY ARISING OUT OF A MATRIMONIAL RELATIONSHIP

Chapter V
General Provisions

Section 4:34

[Property relationships of spouses]

(1) Parties to the marriage and spouses may arrange their relationship in terms of property by means of a marital agreement for the duration of their matrimonial relationship.

(2) Unless otherwise provided by the marital agreement, marital community of property (matrimonial property regime) shall exist between the spouses for the duration of the matrimonial relationship.

Section 4:35

[Temporal scope of provisions relating to property rights]

(1) The statutory matrimonial property regime shall enter into effect from the beginning of life partnership, even if the spouses lived together as domestic partners before the marriage. Upon entering into marriage the existence of life partnership shall be presumed.

(2) Any temporary disruption in life partnership shall not affect the continuity of the matrimonial property regime, statutory or contractual, except if the assets in question are distributed among the parties.

Section 4:36

[Property consequences of invalid marriages]

(1) If both spouses acted in good faith when entering into an invalid marriage, the same property consequences shall apply - including the use of the common home - as if the marriage was valid. In that case, if the marriage is declared invalid, both spouses shall be entitled to make property claims as if the court had dissolved the marriage at the time invalidity was established, or - if invalidity was established after the death of one of the spouses - as if the marriage had been terminated upon the spouse's death.

(2) If only one of the spouses acted in good faith when entering into an invalid marriage, the provisions set out in Subsection (1) may be applied upon the request of the bona fide spouse.

(3) The property claims of the bona fide spouse referred to in Subsection (1) may be enforced by his/her heir as well.

(4) The invalidity of the marriage shall be without prejudice to any contract concluded by the spouses together, or by either one of them with a bona fide third party.

Chapter VI
Marital Community of Property

1. Community property and separate property

Section 4:37

[Community property]

(1) Marital community of property means property acquired by the spouses during the community of property, irrespective of whether such property is acquired together or separately.

(2) Community property of the spouses shall include the burdens of their common assets and - unless this Act provides otherwise - they shall collectively shoulder the debts arising out of or in connection with obligations undertaken by either of the spouses during community of property.

(3) The spouses shall be entitled to an undivided and equal share of the marital property.

(4) Community property shall not include those assets, burdens and debts which are treated as separate property of either spouse.

Section 4:38

[Separate property]

(1) Separate property of a spouse shall include:

a) any property acquired before marital community of property;

b) any property acquired by gift, bequest, devise, or inheritance, and any received without compensation during marital community of property;

c) any right of the spouse as the proprietor of intellectual property, except for the royalties due during community of property;

d) any compensation received for personal injury;

e) personal effects and articles of personal use of customary value; and

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f) assets acquired in exchange for the spouse's separate property and anything of value acquired for such property.

(2) The proceeds on separate property that remain during matrimonial relationship after handling and maintenance charges and other burdens are deducted shall be considered community property.

(3) The assets comprising a part of separate property of either spouse, which replace any furnishing and household item normally used in everyday life during matrimonial relationship shall become community property after five years of marriage.

Section 4:39

[Burdens and liabilities on separate property]

(1) Apart from statutory maintenance obligations, any debt arising out of or in connection with an act that took place before the onset of matrimonial relationship shall be charged to the separate property.

(2) Separate property shall include the burdens on assets comprising part of separate property and the interest on any debt treated as separate liability.

(3) Separate property shall include any debt incurred during matrimonial relationship:

a) that is incidental to the acquisition or maintenance of the separate property, excluding the expenses related to the acquisition of the proceeds of such separate property and to the maintenance of assets which are used or utilized by the spouses collectively;

b) that is based on any obligation stemming from the spouse's disposition relating to his/her separate property;

c) that was undertaken without any consideration by the spouse upon community property, without the consent of the other spouse;

d) resulting from any unlawful and intentional conduct, or gross negligence of the spouse, if the debt is in excess of the other spouse's enrichment.

(4) The separate property status of the debt shall not affect the other spouse's liability in dealing with third parties.

Section 4:40

[Presumption of community property status]

(1) Unless otherwise provided for in this Act, the assets of the spouses shall be presumed to comprise a part of community property during the existence of community of property.

(2) During the existence of community of property, the fulfillment of any obligation relating to community property or to the separate property of either spouse shall be presumed to have been executed from the community property of the spouses.

Section 4:41

[Contracts between spouses]

(1) Any exchange or sales contract, contract of gift and loan agreement between spouses during matrimonial relationship, including any acknowledgement of debt between spouses shall be considered effective if executed in an authentic instrument or in a private document countersigned by a lawyer. This provision shall not apply to giving away movable property as gift of common value, if the gift has in fact been delivered.

(2) Where an agreement of the spouses concerns the community property or separate property status of an asset, burden or liability, or it alters the ratio of these properties, such agreement shall be considered effective in dealing with third parties if the third party was aware, or should have been aware that the asset in question belonged to community property or separate property under the agreement.

2. Using and handling assets considered community property

Section 4:42

[Use and handling of assets considered community property]

(1) The assets of community property may be used by either of the spouses for their intended purpose. Neither of the spouses should exercise this right with prejudice to the rights and lawful interest of the other spouse.

(2) The asset of community property should be managed by the spouses collectively. Either of the spouses may request the other spouse's consent for taking measures which are deemed necessary for the protection and maintenance of assets comprising part of community property. Urgent measures for the protection of assets may be implemented by either spouse without the consent of the other spouse, however, the spouse should be notified thereof without delay.

(3) During the time between the termination of life partnership and the division of community property, the use and handling of asset of community property shall be governed by the provisions on common property, unless otherwise provided for in this Act.

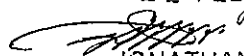
Section 4:43

[Use and administration of assets required for the pursuit of profession or for business purposes]

(1) The right of use and administration of assets comprising part of community property, which are required for the pursuit of profession or private entrepreneurial activities shall accrue to the spouse who is engaged in

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the pursuit of that profession or business activity, provided that the other spouse consented to the exclusive exercise of such rights. Consent shall be considered granted if the other spouse was aware, or should have been aware of the pursuit of that profession or business activity, and did not object.

(2) If the spouse is a member or shareholder of a sole proprietorship, a cooperative society or a business association, he/she shall be able to exercise membership or shareholder rights of his/her own accord, even if capital contribution was provided from the marital community property. The spouse shall be informed on a regular basis concerning the outcome of operations of the sole proprietorship, cooperative society or business association.

(3) In exercising the right of use or administration under Subsections (1)-(2), and also in exercising membership or shareholder rights the spouse shall take due account of the other spouse's interest. The spouse shall be held liable for damages caused by any breach of such obligations in accordance with the general provisions on non-contractual liability.

Section 4:44

[Costs and expenses]

(1) The costs of maintenance and administration of the assets of community property, the costs of maintaining the common household and the expenses of supporting and raising the common child of the spouses shall primarily be covered from the community property.

(2) If the community property is insufficient to cover the costs and expenses defined in Subsection (1), they shall be covered from the spouses' separate property as commensurate. If only one of the spouses has any separate property, the funds required to cover said outstanding expenses shall be made available by that spouse.

3. Disposition over community property

Section 4:45

[Disposition over common property during community of property]

(1) During community of property the spouses shall be able to make any disposition relating to their community property collectively, or subject to the other spouse's consent.

(2) As regards an agreement concluded by one of the spouses during the community of property, no formal requirements apply to the other spouse's consent.

Section 4:46

[Presumption of spousal consent]

(1) Any contract for pecuniary interest concluded by a spouse during the community of property shall be presumed - unless otherwise provided for in this Act - to have been concluded with the other spouse's consent if the contracting third party was aware, or should have been aware that the other spouse had not given his/her prior consent for the contract.

(2) If the spouse concluded the contract aimed at satisfying his/her everyday needs or within the framework of the pursuit of his/her profession or business activity, the other spouse may invoke the lack of his/her consent if having specifically expressed to the contracting third party his/her objection before the contract was concluded.

Section 4:47

[Disposition over community property during the time period between the termination of marital community of property and the division of community property]

(1) During the time period between the termination of marital community of property and the division of community property, as regards disposition over community property the provisions on disposition over community property during marital community of property shall apply with the exception that either spouse, in due observation of prudential management requirements, may, without the other spouse's consent:

a) exercise control of the assets used within the framework of the pursuit of his/her profession or business activity, or reserved for such purposes;

b) exercise control of those movable property, which had been transferred to his/her exclusive possession following the termination of marital community of property by agreement of the spouses;

c) undertake commitments aimed at the protection, maintenance, restoration and preservation of community property; and

d) satisfy debts owed on community property, in a manner where the debt may not become more onerous for the community property.

(2) The provision contained in Subsection (1) shall not affect the obligation of reimbursement prevailing at the time of division of the community property.

Section 4:48

[Special rules applicable to common home and contribution to company capital]

Neither of the spouses shall be entitled to dispose over the real estate property containing the jointly owned family home of the spouses during community of property, or during the time period between the termination of marriage and the division of community property without the other spouse's consent, and may not use

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community property as capital contribution for a sole proprietorship, business association or cooperative society. In that case the other spouse's consent shall not be presumed.

4. Responsibility stemming from exercising the right of disposition

Section 4:49

[Liability of spouses in respect of contracts in dealings with third parties]

(1) Where a spouse enters into a contract involving community property, he/she shall cover any debts arising out of or in connection with such contract from his/her separate property and from his/her share of the community property.

(2) Where a spouse did not take part in concluding a contract that the other spouse entered into with his/her consent, the liability of the non-participating spouse in dealings with third parties shall be covered from the community property up to his/her share at the time when the debt falls due.

Section 4:50

[Legal effects of contracts concluded without spousal consent]

Where a spouse did not consent to a contract concluded by the other spouse regarding community property, and no consent can be presumed or the presumption has been rebutted, the spouse shall not be held liable for any obligation arising out of or in connection with that contract. A contract concluded without the spouse's consent shall have no legal force in respect of such spouse if the acquiring party acted in bad faith or had a gratuitous advantage originating from the contract. If the other spouse concluded the contract with his/her relative, bad faith and gratuitous nature shall be presumed.

Section 4:51

[Liability toward third parties in the case of unjust enrichment]

Where a spouse made any gain in consequence of a contract or any other form of legal obligation entered into by the other spouse, he/she shall be held liable in dealings with third parties on the grounds of unjust enrichment even if otherwise exempt from liability.

Section 4:52

[Responsibility of the spouse who negotiated the contract towards the other spouse]

Where a spouse enters into a contract which carries any liability for the other spouse, without the consent of that spouse, he/she shall be liable to compensate the other spouse for damages arising in connection with that contract on the grounds of non-contractual liability, unless he/she is able to verify that the contract was made in light of the other spouse's interest and presumed intent, specifically, if the contract was made with a view to safeguarding the community property.

5. Termination of community of property

Section 4:53

[Termination of community of property]

Community of property shall terminate if:

- a) the spouses precluded community of property for future considerations by means of a marital agreement;
- b) excluded by court order during matrimonial relationship; or
- c) the matrimonial relationship is terminated.

Section 4:54

[Termination of community of property by court order]

(1) In justified cases the court shall, during the matrimonial relationship, dissolve community of property at the request of either of the spouses. This shall, in particular, include if:

a) the other spouse accumulated debts by way of entering into any contract without the consent of the requesting spouse or by means of non-contractual liability of a measure that jeopardizes his/her share of the community property;

b) an enforcement procedure is opened against the other spouse engaged in private entrepreneurial activities, or an enforcement procedure or liquidation proceeding is opened against the sole proprietorship, cooperative society or business association in which the other spouse has unlimited liability, and such proceedings jeopardize his/her share of the marital community property; or

c) the other spouse is placed under guardianship invoking fully limited legal competency or under conservatorship invoking partially limited legal competency in respect of his/her financial affairs, and the appointed conservator is a person other than the spouse.

(2) Unless otherwise instructed by the court, community of property terminates on the last day of the month following the date on which the resolution on termination becomes final.

Section 4:55

[Legal effects of the termination of community of property by court order]

If the court terminates the community of property, the property relations of the spouses shall henceforth be governed by the provisions on the separation of property during their life partnership.

Section 4:56

[Reestablishment of community of property by court order]

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If the reason under which the court ordered the termination of community of property no longer exist, upon the spouses' mutual request, the court shall reinstate community of property during marital relationship for future considerations.

6. Distribution of community property of the spouses

Section 4:57

[Distribution of community property]

(1) If community of property is terminated either spouse may request the division of community property. If marriage is terminated upon the spouse's death, this right shall accrue upon the heir.

(2) If community property is divided by way of an agreement between the spouses, the agreement shall be considered valid if executed in an authentic instrument or in a private document countersigned by an attorney. This provision shall not apply to the division of movable community property, if division has already been carried out.

(3) If the spouses failed to reach an agreement regarding the division of community property, or it does not cover all claims arising out of the community of property, an action may be brought before the court for the division of community property and for the settlement of open claims, if any.

Section 4:58

[Settlement of claims relating to community property]

Claims arising out of or in connection with marital community of property shall be settled uniformly.

Section 4:59

[Claims for compensation between community property and separate property]

(1) In the process of division of community property, claims can be made for compensation for any expenses made from community property on separate property, from separate property on community property and from the separate property of one spouse on the separate property of the other spouse, including the settlement of debts from the property of the other spouse. Compensation claims shall be settled in accordance with the provisions on determining the value of the spouses' share.

(2) Compensation for any expenditures made from separate property for covering common expenses may be claimed under exceptional circumstances.

(3) There shall be no right of compensation if it has been waived by the spouse. There are no formal requirements for the waiver, however, the burden of proof lies with the spouse who relies on the waiver.

(4) Where an expenditure results in considerable increase in the value of real estate property, the spouse entitled to compensation may also lay claim to an ownership share consistent with the increase in the property's value.

(5) There shall be no right of compensation for any missing community property or separate property if there is no community property at the time when community of property is terminated, and the spouse liable to provide compensation has no separate property either.

Section 4:60

[Value and disbursement of community property share]

(1) The share of a spouse from community property shall be established based on the status and value prevailing at the time of termination of community of property. Any change in value between the time of termination of community of property and the division of community property shall be taken into consideration, except if it is attributable to any conduct of either spouse.

(2) The division of specific items of community property shall be governed by the provisions on the termination of joint ownership, with the proviso that division in kind is not allowed even if objected to by either of the spouses on reasonable grounds.

(3) The provisions of Subsection (2) shall also apply to the division of rights and claims comprising part of community property.

Section 4:61

[Distribution of assets and liabilities]

(1) In determining the distribution of assets among the spouses in terms of ownership of certain items, the court shall first and foremost take into account the spouses' uniform statement.

(2) The assets which are required for the pursuit of profession or private entrepreneurial activities by either spouse shall in principle accrue to the spouse who is engaged in the pursuit of that profession or business activity.

(3) If one of the spouses is a member or shareholder of a business association where the capital contribution of that spouse was provided from the community property, the court may assign a share of ownership in the business association to the other spouse - at this/her request - under the provisions on the transfer of corporate membership rights, if his/her share from the community property cannot be allocated otherwise in accordance with the provisions on the disbursement of a share from the community property subject to the provisions set out in Subsection (1).

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(4) If the asset carries any debt, in the property relationships of spouses it shall be covered by the spouse who gained ownership of the asset following distribution. The distribution of debts shall apply in respect of the creditor according to the rules on the assumption of debts.

Section 4:62

[Disbursement of separate property]

Separate property existing at the time of termination of community of property shall be allocated in kind, except when this is not possible on account of the mixing of assets or if division is likely to considerably diminish the value of community property or separate property.

Chapter VII
Marriage Contracts

1. General provisions

Section 4:63

[Mandatory layout of marriage contracts]

(1) The function of the marriage contract is to permit the parties to the marriage or the spouses to define a property regime - in lieu of marital community of property - with a view to governing their property relationships during the marriage from the time specified in the agreement.

(2) In the marriage contract the parties may define several different property regimes relating to certain specific assets, and they may even deviate from the rules on statutory and optional property regimes, if such deviation is not precluded by this Act.

Section 4:64

[Conditions for the conclusion of marriage contracts]

(1) The marriage contract shall be concluded in person by the parties to the marriage or the spouses.

(2) The approval of the guardian authority is required for the validity of marriage contracts, if the spouse is under the age of eighteen years or his/her capacity in respect of making legal statement relating to property has been partially limited.

Section 4:65

[Formal requirements for and keeping records of marriage contracts]

(1) A marriage contract shall be considered valid if executed in an authentic instrument or in a private document countersigned by an attorney.

(2) A marriage contract shall be considered effective in dealing with third parties if the contract is recorded in the national register of marriage contracts, or if the spouses are able to prove that the third party was aware, or should have been aware that such contract existed, including its contents.

Section 4:66

[Amendment to and termination of marriage contracts]

(1) The spouses shall be able to amend or terminate the marriage contract during their matrimonial relationship.

(2) Any amendment to and the termination of marriage contracts shall be governed by the provisions on the scope and validity of contracts.

Section 4:67

[Protection of third parties]

(1) A marriage contract shall not contain any clause having retroactive effect for changing, to the detriment of a third party, any obligation a spouse may have in dealing with third parties arising before the marriage contract was concluded.

(2) Where an agreement of the spouses alters the community property or separate property status of an asset in derogation from the relevant provisions of the marriage contract, such agreement shall be considered effective in dealing with third parties if the third party was aware, or should have been aware that the asset in question belonged to community property or separate property under the agreement.

Section 4:68

[Testamentary disposition]

If the marriage contract contains provisions for the disposition over the spouses' assets in the event of their death, the rules pertaining to joint wills shall apply to such dispositions.

2. Marital property acquisition regime

Section 4:69

[Marital property acquisition regime]

(1) If the parties to the marriage or the spouses agree to install a marital property acquisition regime in the marriage contract, they shall be considered independent in their property acquisitions during their matrimonial relationship, therefore the rules on separate property shall apply between them. After the termination of

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marriage, either of the spouse may demand a share of the growth in assets which is considered to have been acquired jointly.

(2) Jointly acquired property means the net value, at the time of termination of marriage, of the spouse's property remaining after his/her debt share and separate property are deducted.

(3) As regards marital property, the property existing at the time of termination of matrimonial relationship shall be presumed to have been acquired jointly.

(4) Specific assets, burdens and debts to be taken into account as separate property shall be determined relying on the provisions of the matrimonial property regime on separate property. In addition to existing separate property, the value of any separate property which the spouses spent during their matrimonial relationship on jointly acquired property or on the separate property of the other spouse shall also be considered to comprise a part of separate property, Compensation for any shortage in separate property shall be permitted only if expressly specified.

Section 4:70

[Protection of a spouse's share from jointly acquired property]

(1) A spouse may request, during marriage, to have the value of his/her share from the jointly acquired property established, as well as adequate safeguards up to such value or the termination of the marriage contract if the other spouse accumulated debts by way of entering into any contract without his/her knowledge in a value that exceeds his/her share of the assets treated as jointly acquired property.

(2) Guaranteeing jointly acquired property as under Subsection (1) shall be without prejudice to any right of a third party holding a previous claim against the other spouse.

(3) If the other spouse refuses to cooperate in establishing the value of jointly acquired property and in providing adequate safeguards despite of having been asked to do so, or prevents such efforts, the spouse may bring action in the court.

(4) The court shall have powers to terminate the contract at the request of either spouse on the grounds referred to in Subsection (1), and may order the separation of property between the spouses for future considerations.

Section 4:71

[Sharing of jointly acquired property]

(1) The sharing of jointly acquired property from the property existing at the time of termination of the matrimonial relationship may be requested in accordance with the provisions of the matrimonial property regime on the division of community property. The spouse shall not lay any claim to assets which are required for the pursuit of profession or private entrepreneurial activities of the other spouse, nor shall he/she do so in respect of any share of the other spouse in the capital of a business association, even if he/she contributed to the funding thereof.

(2) Either spouse shall be entitled to half of all jointly acquired properties.

3. Separation-of-property system

Section 4:72

[Separation-of-property system]

If the spouses excluded marital community of property fully in the marriage contract for future purposes, or limited it for certain specific acquisitions, assets, burdens and debts, the excluded segments of the property shall be governed between the spouses under the system of separation of property.

Section 4:73

[Use and handling of assets; covering debts, costs and expenses]

(1) If, based on court order or a contract between the parties to the marriage or the spouses separation of property is instituted, said parties or spouses shall have access to and use their own assets independently during matrimonial relationship, and they shall autonomously control such assets and be liable for their own debts.

(2) The costs of maintaining the common household and the expenses of supporting and raising the common child of the spouses, as well as the child of one of the spouses living in their household with the other spouse's consent shall be covered by the spouses together even if they live under the separation-of-property system. Any clause allowing complete or near complete exemption for either spouse from such costs and expenses shall be null and void. Work done in the household and in raising a child shall be construed as a contribution to costs.

4. Termination of the marriage contract

Section 4:74

[Cases of termination of a marriage contract]

(1) A marriage contract may be terminated by the parties before the beginning of their marital relationship, or either of them may withdraw from the contract. During their matrimonial relationship, the parties may extinguish the contract for future purposes.

(2) Furthermore, a marriage contract shall be terminated

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- a) by order of the court in the cases defined in this Act; or
- b) if matrimonial relationship is terminated, except if it takes place upon the death of either of the spouses, in which case the contract may take effect as the spouse's joint will.

(3) If the contract terminates upon the parties' mutual consent or by way of the right of either spouse to terminate it as afforded in the contract, the property relations of the spouses shall be governed by the provisions on marital community of property during their matrimonial relationship from the time of termination.

(4) The termination of the contract shall be considered effective in dealing with third parties from the time when the contract is removed from the register or when the third party gains knowledge of the termination of the contract.

Section 4:75

[Settlement, distribution of assets]

If the marriage contract is terminated either spouse may request settlement and the distribution of community property according to the property regime fixed in the contract.

Chapter VIII

Use of the Common Home of the Spouses

Section 4:76

[Common home of the spouses]

(1) Common home of the spouses means a dwelling in which the spouses live together and which is owned by either or both them, or in which either or both spouses have tenancy or lease rights.

(2) Minor children of the spouses shall be given the right of tenancy in the common home of the spouses.

(3) In the application of this Chapter, the minor child of a spouse holding exclusive legal title for the home shall also have the right of tenancy.

Section 4:77

[Restriction of the right of disposition over the common home]

(1) During marriage and also after its termination until the right of tenancy is settled the use of a home occupied on the basis of the spouses' common legal title shall be controlled by either spouse together with the other spouse, or with the other spouse's consent. Consent may not be presumed.

(2) The dissolution of the marriage or the termination of matrimonial relationship shall not in itself terminate the right of tenancy of the spouse who resides in the home under the other spouse's legal title.

(3) During marriage, and also after the termination of marriage until the right of tenancy is settled a spouse shall not be allowed to make any decision concerning the home used under his/her exclusive legal title without the consent of the other spouse, where such decision would put the other spouse or the child living in the home at a disadvantage.

Section 4:78

[Contractual arrangement of the right of tenancy]

(1) The parties to the marriage or the spouses may make prior arrangements for the use of the common home of the spouses for the dissolution of the marriage or the termination of matrimonial relationship. The agreement shall be considered valid if executed in an authentic instrument or in a private document countersigned by an attorney.

(2) The agreement shall apply to a common home that replaces the home existing at the time of its entry into effect, if the agreement so provides.

(3) The parties shall also have the option to make arrangements for the use of the common home in the marriage contract.

Section 4:79

[Applicability of the right of tenancy of children]

(1) If in the agreement for the prior arrangement of the right of tenancy the parties agree on providing continued housing for their children with the right of tenancy following the dissolution of the marriage or the termination of matrimonial relationship, the agreement shall also apply to their child born after the agreement was concluded.

(2) If the agreement does not contain the provision defined in Subsection (1), or the provision seriously harm the right of the minor child with the right of tenancy for adequate housing, the court may override such provision regarding the use of the common home of the spouses following the dissolution of the marriage or the termination of the matrimonial relationship in the interest of the child.


Section 4:80

[Right of tenancy after the termination of matrimonial relationship]

(1) Following the termination of matrimonial relationship the spouses may agree to continue using the common home. There are no formal requirements for such an agreement.

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(2) In the absence of an agreement for the prior arrangement of the right of tenancy, or any other agreement concluded after the termination of matrimonial relationship, further use of the common home following the dissolution of the marriage or the termination of matrimonial relationship shall be decided by the court at the request of either of the spouses.

(3) If either spouse requests in a divorce action or in an action for the distribution of community property the termination of joint ownership of the common home, the court shall provide for the use of the spouses' home together with the termination of joint ownership.

(4) The right of tenancy of a child shall be ensured in the former common home to best accommodate his/her living conditions, except if adequate housing is available elsewhere.

Section 4:81

[Sharing the use of a home occupied under common legal title; omission of sharing]

(1) If the spouses have a common legal title for using their home, the court shall order the shared use of the home, if this is possible based on the attributes of the home. Shared use of a home is permitted also if the home can be fitted for shared use by minor alterations, provided that one or both spouses verify their entitlement of making such alterations and the technical requirements thereof, and if they agree to advance the costs of such works. In the event of dispute, the court shall decide on bearing the costs of such works.

(2) In the case of shared use of the home, the spouses shall have exclusive use of certain specific rooms and areas of the home, and shared use of other areas. Shared use of the home shall not affect the rights and obligations of the spouses in dealings with third parties.

(3) The court may refrain from ordering the shared use of a home with due regard to the parties' relevant circumstances if:

a) the spouses or one of the spouses have a vacant home in the same community, or such home can be made vacant by means of a unilateral statement; or

b) one of the spouses moved out from home on his/her own volition, without the intent to return, and - if he/she exercises parental supervision - he/she has properly provided the right of tenancy for the minor child.

(4) A home, that is otherwise suitable, shall not be shared if one of the spouses is engaged in actionable conduct on account of which shared use is likely to cause serious harm to the interest of the other spouse or the minor child.

Section 4:82

[Termination of the right of tenancy of one of the spouses]

(1) If use of a home used under common legal title of the spouses is not shared, the court shall abolish the right of tenancy of one of the spouses and shall order such spouse to vacate the home, unless one of the spouses moves out from home on his/her own volition, without intent to return.

(2) Moreover, the court shall abolish the right of tenancy of one of the spouses and shall order such spouse to vacate the home also if, even though the home is considered suitable for shared use, the other spouse offers an adequate replacement home for the spouse in question, and if such arrangement of tenancy does not harm the interest of a minor child with the right of tenancy.

Section 4:83

[Use of a home occupied under the exclusive legal title of one of the spouses]

(1) If the common home of the spouses is used under the exclusive legal title of one of the spouses, following the dissolution of the marriage or the termination of the matrimonial relationship the court shall authorize that spouse to continue using the home.

(2) The court shall order the shared use of a home that is considered suitable, if having granted parental authority for the other spouse over at least one of the minor children with right of tenancy, or if moving out of the home by the other spouse would be gravely unjust, taking into account the length of the marriage and the circumstances of that spouse.

(3) On an exceptional and duly justified basis, the court may grant entitlement to a spouse for the exclusive use of a home owned exclusively by the other spouse, or in which the other spouse has beneficial rights, if that parent has parental authority over a minor child with the right of tenancy and the housing for the minor child cannot be provided otherwise. In that case, the spouse shall have tenant status, with the proviso that his/her right of tenancy may be terminated by offering an adequate replacement subject to notice.

(4) The court may order shared use of a home or exclusive right of tenancy as provided for under Subsections (2)-(3) for a fixed period of time, or subject to some condition.

Section 4:84

[Compensation for the value of the right of tenancy]

(1) The spouse required to vacate the home under contract or by court order shall be entitled to lay claim for compensation in the monetary value of his/her right of use.

(2) No compensation may be claimed:

a) if the spouse agreed under contract to vacate the home and waived any claim for housing or compensation; or

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b) if the court deprived the spouse of the right of tenancy for a specific period of time, or subject to some condition.

(3) In determining the amount of compensation the value of the right of tenancy of a child shall be taken into consideration for the benefit of the spouse who henceforward provides housing for the child under his/her parental authority.

(4) Compensation shall be due immediately at the time of moving out of the home, except if:

a) the court has ordered the spouse to vacate the home on account of his/her wrongful conduct, and simultaneous performance would seriously harm the interest of the remaining spouse and the minor child; or
b) use of the home is provided for in the action for the division of community property, and the court shall apply the value of the right of use in the process of distributing the assets.

(5) Instead of compensation, the spouse remaining in the home may offer an adequate replacement home for the spouse moving out.

Section 4:85

[Rearranging the right of tenancy]

(1) If the court has ordered the shared use of a home, or ordered the spouse who is the owner or holder of beneficial interest to vacate the home, either spouse may request rearrangement of the right of tenancy on the pretext that his/her relevant lawful interests or the interest of the common child of minor age are in jeopardy under the current arrangement due to changes in the circumstances underlying the arrangement in question.

(2) The provisions in Subsection (1) shall not affect the spouse's right to request termination of his/her former spouse's co-tenancy following the order of shared use, under the relevant provisions of this Act pertaining to co-tenancy.

PART THREE LEGAL ASPECTS OF CIVIL PARTNERSHIPS UNDER FAMILY LAW

TITLE VII MAINTENANCE OBLIGATIONS IN CIVIL PARTNERSHIPS

Section 4:86

[Entitlement for maintenance]

(1) Following the termination of civil partnership, either partner shall be entitled to demand maintenance from his/her partner if unable to support him/herself for reasons beyond his/her control, if their civil partnership existed for at least one year and it produced a child.

(2) If the former partner develops the need for support after a period of one year following the termination of civil partnership, maintenance may be demanded in cases of exceptional circumstances.

Section 4:87

[Undeserving maintenance]

(1) A former partner shall be considered unworthy of maintenance:

a) if the breakdown of their relationship is attributable to his/her gross misconduct or reprehensible lifestyle;
or

b) if engaged after the termination of civil partnership in any conduct intended to do harm to his/her former partner or the partner's resident family member.

(2) In determining unworthiness, the actions of the former partner invoking it shall also be taken into consideration.

Section 4:88

[Ability to provide maintenance]

A person shall not be obligated to support his/her former partner if this would seriously jeopardize his/her ability to provide for him/herself or for his/her child.

Section 4:89

[Agreement to provide lump-sum maintenance]

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By agreement of the partners executed in an authentic instrument or in a private document countersigned by an attorney, the partner subject to maintenance obligation shall meet this obligation by providing assets of kind value or in a lump-sum payment. In that case the partner to whom maintenance is provided shall not make any maintenance claim in the future, even if otherwise would be eligible under this Act.

Section 4:90

[Order in which maintenance is provided between spouses and domestic partners]
Former partners shall be entitled to maintenance in line with a separated or former spouse.

Section 4:91

[Maintenance of relatives]

The amount of maintenance, the means of providing and the duration such maintenance, including any changes thereof, the enforcement of any maintenance claim retroactively, the cessation of right to maintenance and the termination of maintenance shall be governed by the common provisions on the maintenance of relatives, with the proviso that the right to maintenance in civil partnership shall cease if the entitled party enters into another civil partnership or into marriage.

**TITLE VIII
RIGHT OF TENANCY IN CIVIL PARTNERSHIPS**

Section 4:92

[Settlement of the right of tenancy in court]

In the absence of an agreement for the prior arrangement of the right of tenancy relating to the common home, or any other agreement concluded after the termination of civil partnership, further use of the common home following the termination of partnership shall be decided by the court at the request of either of the partners.

Section 4:93

[Use of a home occupied under the common legal title of the partners]

(1) Further use of the common home used under the common legal title of the partners shall be decided by the court in accordance with the provisions governing the use of a home used under common legal title of spouses.

(2) In its decision for the further use of the home used under the common legal title of the partners following the termination of their partnership, the court shall take due account of the right of a common child of minor age with the right of tenancy for adequate housing.

Section 4:94

[Entitlement of either partner for use of a home occupied under the exclusive legal title of the other partner]

(1) Following the termination of civil partnership, the court may award the right to a former partner - at his/her request - to continue using the common home occupied under the exclusive legal title of the other partner, if their civil partnership existed for at least one year and if this is justified in the interest of providing adequate housing under the right of tenancy of a minor child born during their relationship.

(2) In the cases provided for in Subsection (1), the court shall primarily order the shared use of a home that is considered suitable.

(3) On an exceptional and duly justified basis, the court may grant entitlement to a former partner for the exclusive use of a home owned exclusively by the other partner, or in which the other partner has beneficial rights, if that partner has parental authority over at least one of the common minor children with the right of tenancy and the housing for the minor child cannot be provided otherwise.

(4) The court may order shared use of a home or exclusive right of tenancy as provided for under Subsections (2)-(3) for a fixed period of time, or subject to some condition.

(5) The former partner granted exclusive right of tenancy shall have tenant status, with the proviso that his/her right of tenancy may be terminated by the other partner or replacement subject to notice.

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(3) If paternity is established by way of judicial process with respect to a child of legal age, the child shall have the option to decide to take up the name of his/her biological father or to keep his/her existing surname. If the child fails to exercise this option, the presumption of paternity shall not affect his/her name.

(4) The judgment establishing paternity applies to all parties involved.

(5) If descent results from a reproduction procedure, paternity may not be established by way of judicial process with respect to a man who made a donation of gamete or embryo for the procedure.

Section 4:104

[Persons entitled to bring paternity suit]

(1) An action for establishing paternity by way of judicial process may be brought by the mother, the child - or by the child's descendant after his/her death -, or by the father.

(2) The minor child may join the action on his/her mother's side with the guardian authority's consent.

(3) If descent results from a reproduction procedure, no action may be brought by a man who made a donation of gamete or embryo for the procedure.

Section 4:105

[Exercising the right to bring action]

(1) An action for the establishment of paternity shall be brought by the entitled party in person.

(2) As regards an acknowledgement of paternity made by a minor of limited legal capacity or by any person whose capacity in respect of making legal statements relating to descent has been partially limited, such an action may be brought with the consent of the legal representative. If the legal representative is unavailable for any extended period of time to give consent, or if refuses to consent, the guardian authority may do so in his stead.

(3) If the entitled party is incompetent, the action may be brought in his/her name by the legal representative with the guardian authority's consent.

(4) The mother may proceed in the action as her child's legal representative.

Section 4:106

[Respondents in paternity suits]

(1) Actions for the establishment of paternity shall be filed against the father, whereas the father shall bring such action against the child.

(2) If the child did not join his/her mother in an action brought by the mother, the mother shall bring action against the child as well. In this event, the guardian authority shall appoint a caretaker officer to represent the child.

(3) If the party against whom the action is to be brought is no longer alive or cannot be located, the guardian ad litem appointed by the court shall be named as the defendant in the action.

Chapter X

Contested Presumption of Paternity

Section 4:107

[Grounds for challenging the presumption of paternity]

(1) The presumption of paternity may be challenged alleging that the man presumed to be the father did not have sexual contact with the mother of the child at the time of conception, or that he could not have fathered the child based on the relevant circumstances.

(2) If the presumption of paternity is based on a fully enforceable acknowledgement of paternity, it may be challenged alleging that:

a) the statement is not fully enforceable in the absence of the relevant legal requirements;

b) the acknowledgement of paternity was made in error, or under misrepresentation or duress; or

c) the acknowledgement of paternity was made for the purpose of circumventing the law.

(3) If descent results from a reproduction procedure, presumption of paternity may be contested if the mother's husband or partner has not given his prior consent for the procedure.

Section 4:108

[Exclusion of challenging the presumption of paternity]

The presumption of paternity may not be contested if:

a) descent results from a reproduction procedure, except if the mother's husband or partner has not given his prior consent for the procedure; or

b) paternity was established by way of judicial process.

Section 4:109

[Persons entitled to challenge the presumption of paternity]

(1) The presumption of paternity may be challenged by the presumed father, the mother, the child, or by the child's descendant after his/her death.

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(2) Alleging that the acknowledgement of paternity was made in error, or under misrepresentation or duress, the presumption of paternity may be challenged by the father only.

(3) The mother may bring action with the guardian authority's consent, jointly with her minor child.

(4) The mother's former husband shall be entitled to challenge the presumption of paternity if, based on the presumption, the mother's new husband is considered the father, however, if that presumption is rebutted, the former husband would have to be considered the father.

(5) Alleging that the acknowledgement of paternity was made for the purpose of circumventing the law, the public prosecutor and the guardian authority shall have the right to challenge the acknowledgement of paternity.

Section 4:110

[Exercising the right to bring action]

(1) An action shall be brought by the entitled party in person.

(2) A minor of limited legal capacity or any person whose capacity in respect of making legal statements relating to descent has been partially limited shall be entitled to bring action with the consent of his/her legal representative. If the legal representative is unavailable for any extended period of time to give consent, or if refuses to consent, the guardian authority may do so in his stead.

(3) If the entitled party is incompetent, the action may be brought in his/her name by the legal representative with the guardian authority's consent.

(4) The mother may proceed in the action as her child's legal representative.

Section 4:111

[Time limits for bringing action]

(1) An action for challenging the presumption of paternity may be brought by the minor child and the mother subject to the guardian authority's consent, before the child reaches the age of three years. Other entitled parties may challenge the presumption of paternity within a period of one year from the date when presumption of paternity is established.

(2) If the presumed father made the fully enforceable acknowledgement of paternity in error, or under misrepresentation or duress, he may bring action for challenging the presumption within one year from the date on which he detected such error or misrepresentation, or from the date of cessation of duress.

(3) If no action had been brought under Subsections (1)-(2) before the child reached the age of majority, during the following one-year period the child shall have the right to bring action on his/her own accord.

(4) Where an entitled party gained knowledge of any fact giving rise to challenge is based, he/she may challenge the presumption of paternity within a period of one year from the date after learning of such reason.

Section 4:112

[Respondents in actions challenging the presumption of paternity; effect of judgment]

(1) An action to rebut the presumption of paternity shall be brought jointly by the child and the mother against the father, by the father against the child, or against both the child and the father if brought by others. The mother shall be named as a defendant in such actions as well - unless brought by the child -, except when this is not possible due to her death.

(2) If the child was born during the mother's new marriage, within three hundred days reckoned from the date of dissolution of the mother's previous marriage, the mother's former husband shall also be named in the action as a defendant.

(3) If the party against whom the action is to be brought is no longer alive or cannot be located, the guardian ad litem appointed by the court shall be named as the defendant in the action.

(4) The judgment to rebut the presumption of paternity applies to all parties involved.

Section 4:113

[Provisions on surnames and visitation rights after the rebuttal of the presumption of paternity]

(1) If the court's decision is in favor of the claim for the rebuttal of the presumption of paternity, the court may, in justified cases:

a) authorize the child to retain his/her surname; and

b) award visitation rights to the man who raised the child in his family as his own over a long period of time.

(2) The child shall be entitled to retain the surname referred to in Paragraph a) of Subsection (1) also if paternity status has been conveyed to another man.

Section 4:114

[Challenging the presumption of paternity in non-contentious proceedings]

(1) No action for the rebuttal of the presumption of paternity is necessary if it exists based on the mother's marriage, matrimonial relationship was terminated at least three hundred days previously, and the natural father of the child wishes to make a fully enforceable acknowledgement of paternity to declare that he is the father of the child.

(2) In the case provided for in Subsection (1), upon the joint request of the presumed father, the mother and the man who wishes to make a fully enforceable acknowledgement of paternity to declare that he is the father

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of the child, the court shall establish in non-contentious proceedings that the child's father is not the mother's husband or former husband. In the same action paternity shall be established by means of fully enforceable acknowledgement of paternity.

(3) The time limits for bringing action for challenging the presumption of paternity shall not apply to the opening of the proceedings referred to in Subsection (2).

Chapter XI

Maternity

Section 4:115

[Legal status of mothers]

(1) The woman giving birth to the child shall be considered the mother of that child.

(2) If the mother's person cannot be established, the child may bring action requesting the court to award mother's status to the person he/she designates. In the event of the child's death, this right shall accrue upon his/her descendants.

(3) An action for establishing maternity by way of judicial process may also be brought by a person who claims to be the mother of the child.

(4) If descent results from a reproduction procedure, no action may be brought by a woman who made a donation of gamete or embryo for the procedure.

Section 4:116

[Action for a negative declaration]

The child, or his/her descendant after the child's death, or the natural mother may bring action requesting the court to establish that the person shown in the registry of births as the mother is not the woman who gave birth to the child, provided that the wrong entry of maternity cannot be remedied by way of an administrative procedure.

Section 4:117

[Exercising the right to bring action]

(1) A maternity suit shall be brought by the entitled party in person.

(2) A minor of limited legal capacity or any person whose capacity in respect of making legal statements relating to descent has been partially limited shall be entitled to bring action with the consent of his/her legal representative. If the legal representative is unavailable for any extended period of time to give consent, or if refuses to consent, the guardian authority may do so in his stead.

(3) If the entitled party is incompetent, the action may be brought in his/her name by the legal representative with the guardian authority's consent.

Section 4:118

[Respondents in maternity suits, legal effects of any change in maternity]

(1) The action shall be brought by the child or his/her descendant against the mother or the person shown in the registry of births as the mother, or by the mother against the child or the person shown in the registry of births as the mother.

(2) If descent results from a reproduction procedure, maternity may not be established by way of judicial process with respect to a woman who made a donation of gamete or embryo for the procedure.

(3) If in an action for establishing maternity by way of judicial process any change in maternity status stemming from the woman's marriage has an effect on the presumption of paternity, the husband who is to be considered the father of the child by way of presumption based on wedlock shall also be named as defendant in the action.

(4) If the party against whom the action is to be brought is no longer alive, the guardian ad litem appointed by the court shall be named as the defendant in the action.

(5) In the event of any change in maternity, the child shall have the option to decide to take up the name of his/her biological mother or to keep his/her existing surname. In justified cases the court may authorize the child to retain his/her surname.

(6) The judgment delivered in a maternity suit applies to all parties involved.

TITLE XI ADOPTION

Chapter XII

Purpose and Conditions of Adoption

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Section 4:119

[Purpose of adoption]

- (1) Adoption shall be considered to establish a family relationship between the adoptive parent, his/her relatives and the adopted child in the interest of allowing the child to grow up in a family.
- (2) Only minor children can be adopted.

Section 4:120

[General conditions of adoption]

(1) For the adoption an identical petition shall be submitted by the person wishing to assume the parenting of a child and by that child's legal representative, together with the consent of the child's parents and the spouse of the adoptive parent.

(2) As to his/her adoption, a minor of limited legal capacity over the age of fourteen years may be adopted with his/her consent. A minor of sound mind under the age of fourteen shall be heard and his/her opinion shall be taken into consideration where deemed appropriate.

(3) In the adoption process efforts should be made to ensure a degree of continuity in the child's upbringing, with particular regard to his/her family ties, nationality, religion, mother tongue and cultural background.

(4) Adoption shall be authorized by the guardian authority.

(5) Moreover, after the requirements set out in this Act are satisfied, the guardian authority shall authorize the adoption if it is deemed to be in the child's best interest. In the interest of the minor child, in its adoption decision the guardian authority shall give preference to adoptive parents living in wedlock.

Section 4:121

[The adoptive parent]

(1) The adoptive parent must be at least twenty-five years of age with legal capacity, must be at least sixteen years and at most forty-five years of the child's senior, and who is considered suitable to adopt the child based on his/her personality and other circumstances. In the case of adoption by a relative or spouse, the requirement of age difference shall not apply.

(2) In the case of adoption as a common child, the age and age difference requirement set out in Subsection (1) shall be satisfied by either of the adoptive parents. If the adoptees are siblings, the age of the older child shall be taken into consideration.

(3) Any person whose parental supervision has been terminated by court order, or who has been excluded from public affairs, and whose child is under foster care may not adopt a child.

Section 4:122

[Establishing suitability for adoption]

(1) Suitability for adoption shall be determined by the guardian authority following the preliminary procedure and preparation carried out in accordance with the relevant legislation.

(2) The suitability of relatives and the parent's spouse, including a person who has been raising the child with the parent's consent in his/her own household for a period of not less than one year and, in the case of international adoption, of the person wishing to assume the parenting of a child shall be determined by the guardian authority in the procedure for the authorization of adoption. This provision shall also apply for determining the suitability of any person who raises a child in his/her own household against compensation by decision of the guardian authority (hereinafter referred to as „child protection foster parent“).

Section 4:123

[Children for adoption]

(1) Apart from the adoption of the minor child of the spouse, a child may be adopted if his/her parents are not alive, or if his/her parents are unable to raise him/her properly.

(2) An adopted child may, during the term of adoption, be adopted by the spouse of the adoptive parent, or by others after the adoptive parent's death. If an adopted child is adopted after the adoptive parent's death, the previous adoption shall cease.

Section 4:124

[Eligibility for adoption]


(1) The guardian authority shall declare a child placed under foster care eligible for adoption for a period of not more than two years if the parent's right of custody had not been terminated and if the parent:

a) has failed - for reasons within his/her control - to keep regular contact with his/her child for a period of one year, or no contact of any kind for a period of half a year, and fails to make any changes in his/her life style and/or other circumstances, on account of which foster care cannot be eliminated; or

b) changes - for reasons within his/her control - his/her permanent or habitual residence without leaving the address of the new permanent or habitual residence, and efforts for obtaining such address proved ineffective within a period of six months.

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(2) In justified cases, the time limit referred to in Subsection (1) may be extended by not more than two years.

(3) In the case provided for in Paragraph a) of Subsection (1), the parent shall be advised in the resolution ordering foster care concerning the legal effects of eligibility for adoption.

(4) The guardian authority shall, upon declaring the child eligible for adoption, suspend the parent's right of access in the interest of the child's adoption.

(5) If the adoption of a minor fails to materialize, and the guardian authority subsequently terminates foster care, the resolution declaring the child eligible for adoption shall be abolished.

Section 4:125

[Parental consent for open adoption]

(1) Open adoption means when the biological parent approves the adoption to an adoptive parent known to him/her.

(2) The parent may withdraw his/her statement of consent within a period of six weeks following the birth of the child for the benefit of caring for and bringing up the child by the parent or another relative of the child. The parent shall be informed of the possibility of withdrawal.

(3) Upon giving consent for adoption, the parent's right of custody terminates when the child reaches the age of six weeks. Termination of the parent's right of custody shall be declared by the guardian authority.

(4) With the exception if the child is adopted by a relative or by the parent's spouse, an open adoption process shall be carried out with the involvement of the regional child protection social services or an organization specializing in adoptions.

Section 4:126

[Parental consent for confidential adoption]

(1) Confidential adoption means when the biological parent agrees to the adoption of his/her child in a manner maintaining the person and the identifying information of the adoptive parents as secret, or where the parent's consent is not required in accordance with this Act. The statement of consent can be made before the birth of the child as well.

(2) The parent may withdraw his/her statement of consent within a period of six weeks following the birth of the child for the benefit of caring for and bringing up the child by the parent or another relative of the child. The parent shall be informed of the possibility of withdrawal.

(3) If the child is over the age of six years or suffers in any mental disorder, the approval of the guardian is required for the validity of the statement of consent.

(4) Within the meaning of Subsection (2), the parent's rights of custody terminates when the child reaches the age of six weeks. Termination of the parent's right of custody shall be declared by the guardian authority.

(5) In the process of confidential adoption the parent is not notified of the adoption and may not seek remedy against the decision on adoption.

(6) In the process of confidential adoption the natural identification data of the biological parent and the adoptive parent shall not be disclosed between them.

Section 4:127

[Adoption without parental consent]

(1) No consent is required for adoption from a parent:

a) whose parental supervision was terminated by final court order;

b) whose child had been placed in foster care, and the guardian authority declared such child eligible for adoption;

c) who is incompetent for reasons other than minority;

d) who cannot be identified or cannot be located, and the measures introduced to identify or locate such person failed; or

e) who abandoned his/her child - with a view to passing on the responsibility of raising the child - at a place designated by a medical institution, without revealing his/her identity, and did not come forward within six weeks to reclaim the child.

(2) No consent is required for adoption from the adoptive parent's spouse if:

a) the spouse is incompetent or cannot be located; or

b) the matrimonial relationship of the spouses was terminated.

Section 4:128

[Care before adoption]

(1) Following the submission of a petition for adoption and after the consent of the parties concerned, the person wishing to assume the parenting of a child shall provide care for that child in his/her home for a period of at least one month. Adoption may be authorized if the above specified period of caring for the child proves to be successful.

(2) Adoption may be authorized without the period of caring referred to in Subsection (1) if:

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- a) the adoptive parent and the biological parent are married;
- b) the adoptive parent has been caring for the child in his/her own home for at least one year with the biological parent's consent; or
- c) the child being cared for is adopted by his/her child protection foster parent, who has been providing for the child's care and upbringing for a period of at least one year.

Section 4:129

[International adoption]

(1) International adoption means when the child moves permanently to another country in consequence of the adoption, irrespective of the adoptive parent's nationality and irrespective of whether or not the child's citizenship is changed.

(2) * Save where the child is adopted by a relative or by the parent's spouse, a child may be adopted internationally if declared eligible for adoption, or if placed under foster care, provided that the child, after having been placed under foster care, if eligible for adoption, was not adopted in Hungary because the measures taken for the child's adoption had failed.

Section 4:130

[Prohibition of financial gain]

Adoption shall not be authorized if it is likely to result in any financial advantage for the parties, other persons or organizations involved in the adoption process, in excess of their justified expenses.

Section 4:131

[Effect of adoption, follow-up procedures]

(1) * Adoption enters into effect on the date on which the resolution on adoption becomes definitive. If the adoptive parent dies during the adoption process, the legal effects of the adoption, if authorized, shall take effect upon the death of the adoptive parent.

(2) * After the adoption the organization delegated by law or the regional child protection social services shall monitor and promote the child's well-being and his/her development for a period of up to five years following the date when the resolution on adoption becomes definitive.

Chapter XIII

Legal Effects of Adoption

Section 4:132

[Child's status in the adoptive parent's family; adoption as a common child]

(1) As regards the adoptive parent and his/her relatives, the adoptee receives the legal status as the adoptive parent's child.

(2) The person adopted by both spouses together or separately, shall be construed as the common child of the spouses. Furthermore, if either spouse adopts the child of the other spouse, that child shall also be considered as a common child.

(3) Adoption will have effect on the descendants of the adopted person.

Section 4:133

[Legal effects on the rights and obligations deriving from descent]

(1) The act of adoption eliminates the rights and obligations accrued upon relationship by descent in connection with parental supervision and the maintenance of relatives, except when one of the spouses adopted the child of the other spouse.

(2) Where one of the spouses adopts the child of the other spouse, and the marriage during which the child was born terminated upon the death of either spouse, the adoption shall not affect the rights of access of the relatives of the deceased spouse.

(3) Where a relative of either spouse adopts the child upon the death of both spouses, the adoption shall not affect the rights of access of the relatives of the other spouse.

(4) On an exceptional and duly justified basis, in the case of open adoption the guardian authority may grant rights of access for the biological parent who has given consent for the adoption of his/her child by the spouse of the other parent.


Section 4:134

[Name of the adoptee]

(1) The adopted child shall use the surname of the adoptive parent accrued by birth or through marriage, with the exception if the adoptive parent uses the full name or surname of her spouse with an indication of marital status. If the adoptive parent uses as her married name her spouse's or former spouse's name without an indication of marital status, or their surnames merged together as their married name, the adoptee's new surname may be - by decision of the adoptive parent - the spouse's or former spouse's surname, the merged

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married name or the adoptive parent's birth name. Where a parent has adopted more than one child, they may all use the same surname.

(2) Where a child is adopted as a common child, the adoptive parents shall specify in the petition for adoption their choice of the surname of one of the adoptive parents the adopted child should use. By agreement of the adoptive parents, the adopted child may use the surnames of the adoptive parents merged together also if the adoptive parents have not merged their surnames. If the spouses did not adopt the child together, in the absence of their agreement the child shall use the surname of the de facto adoptive parent.

(3) The guardian authority may exceptionally permit the adoptee to retain his/her surname.

(4) On an exceptional and duly justified basis, the guardian authority may authorize the adoptee to change his/her forename. The forename shall be decided by the adoptive parents.

(5) The surname and forename of the adopted person shall be established at the time when the authorization for adoption is granted.

Section 4:135

[Right of adoptees to access information about biological relations]

(1) The adoptee shall have the right to request information from the guardian authority as to whether he/she was adopted, about his/her biological parent, about whether he/she has any siblings, and - over the age of fourteen years - shall have access to the natural identification data of his/her biological parent and sibling. A child over the age of fourteen years may submit such request without the permission of his/her legal representative. The parties to the adoption process shall be informed thereof.

(2) Before the disclosure of such information the biological parent and the sibling shall be interviewed. If the adopted person is a minor, the adoptive parent or other legal representative shall also be interviewed. If the sibling is a minor, the prior consent of his/her legal representative is required for the interview. If the biological parent or the sibling is incompetent, their legal representative shall be interviewed as well.

(3) If the biological parent, the sibling, the adoptive parent or other legal representative cannot be located, or if any insurmountable obstacles exist, the aforesaid interview is not required.

(4) The natural identification data of the biological parent or sibling shall not be released to the adoptee if:

- a) it was not possible to interview the biological parent, the sibling, the adoptive parent or other legal representative for they could not be located or any insurmountable obstacles existed;
- b) the biological parent and the sibling did not permit the disclosure of their natural identification data; or
- c) it is not in the minor child's best interest, in particular if the court deprived the biological parent of his/her rights of custody on account of his/her wrongful conduct causing serious injury to, or endangering the interest of, his/her child, including the child's physical integrity mental or moral development.

(5) If the biological parent is not alive at the time the request referred to in Subsection (1) is submitted, his/her natural identification data may be disclosed to the adopted child, except if he/she already blocked the disclosure of his/her personal data previously.

Section 4:136

[Disclosure of the biological parent's medical information]

The guardian authority shall, at the request of:

- a) the legal representative of the adopted child under the age of fourteen years;
- b) the legal representative or the adopted child over the age of fourteen years;
- c) the adoptee of legal age;

disclose information on the biological parent's medical data, excluding natural identification data, which are construed important from the point of view of the adopted person's health. The data requested by an adopted child over the age of fourteen years shall be communicated to the legal representative as well.

Chapter XIV

Nullity and Dissolution of Adoption

Section 4:137

[Nullity of adoption]

(1) Adoption shall be abolished if the adoptive parent provides a fully enforceable acknowledgement of paternity so as to confirm that he is the father of the adoptee, or if the adoptive parent is declared by binding court decision to be the father or the mother of the adopted child.

(2) If adoption is abolished, it shall be construed as if the adoption had not taken place.


Section 4:138

[Dissolution of adoption upon mutual request]

(1) The guardian authority shall have powers to dissolve the adoption upon the parties mutual request.

(2) If the adopted child is a minor, adoption may be dissolved only if it is in the child's best interest. During the procedure the guardian authority shall interview the adopted child's biological parents as well, except when any insurmountable obstacles exist.

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(3) Adoption shall cease at the time the guardian authority's resolution becomes definitive. If either party should die during the process, the legal effects of adoption, if dissolution is authorized, shall be considered terminated with retroactive effect to the date when the petition was submitted.

(4) Dissolution will have effect on the adoptive parent, the adoptive parent's relatives, the adopted person and on the descendants of the adopted person.

Section 4:139

[Dissolution of adoption upon unilateral request]

(1) Adoption shall be dissolved by the court if either the adoptive parent or the adopted person engaged in conduct such that made life under adoption unbearable for the other party. If the adopted child is a minor, adoption may be dissolved on an exceptional and duly justified basis upon the adoptive parent's request.

(2) Upon the death of the adoptive parent, the adoption may be dissolved in the interest of allowing the adoptee to regain his/her family status on the basis of descent.

(3) Dissolution of adoption by judicial process may be requested by either of the parties. If the adopted child is a minor, the guardian authority may bring action for the dissolution of adoption. If the party against whom the action is to be brought is no longer alive, the guardian ad litem appointed by the court shall be named as the defendant in the action. If the adoptive parent dies during the procedure, the guardian ad litem appointed by the court shall be named as the defendant in the action.

(4) If there are more than one adoptive parent, and one of them is alive at the time the action is brought, dissolution of adoption may be requested by the living adoptive parent on behalf of the deceased adoptive parent as well. Such action may be based on the conduct shown with respect to either of the adoptive parents.

(5) If the adopted child is a minor, the court shall hear the biological parents as well, except if any insurmountable obstacles exist.

Section 4:140

[Effect of judgment for the dissolution of adoption]

(1) Adoption shall be abolished on the date on which the decree of dissolution becomes legally binding. If either party should die during the process, the legal effects of adoption, if dissolution authorized, shall be considered terminated with retroactive effect to the date when the petition was submitted.

(2) The decree of dissolution of adoption will have effect on the adoptive parent, the adoptive parent's relatives, the adopted person and on the descendants of the adopted person.

(3) The decree of dissolution of adoption applies to all parties involved.

Section 4:141

[Effect of decree for the dissolution of adoption relating to the adoptive parents separately]

If adoption was dissolved with effect to only one of the adoptive parents, adoption shall be abolished with respect to this parent and his/her relatives, unless the guardian authority or the court provides otherwise.

Section 4:142

[Provisions relating to surnames upon dissolution of adoption]

Following dissolution of adoption the adoptee and his/her descendant may not retain the surname accrued through the adoption. In justified cases the guardian authority or the court may authorize, upon request, the persons concerned to retain the surname accrued through adoption.

Section 4:143

[Protection of rights accrued through the deceased adoptive parent]

The dissolution of adoption shall not affect the rights accrued before the opening of the guardian authority's proceedings or the legal action with respect to the deceased adoptive parent. In that case, the estate already devolved cannot be reclaimed.

Section 4:144

[Legal effects of dissolution of adoption on relationships by descent]

Following the dissolution of adoption, rights and obligations accrued upon relationship by descent shall resume, if they were lost upon the adoption, with the exception of rights and obligations stemming from parental custody.

Chapter XV

Legal Statements Relating to Adoption


Section 4:145

[Legal statements relating to adoption]

(1) Subject to the exceptions set out in Subsections (2)-(3), legal statements relating to adoption shall be made in person. Minors of limited legal capacity shall also be allowed to make legal statements in person, without the consent of their legal representative.

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(2) As regards the legal acts, under family law, of a minor of limited legal capacity the consent of his/her legal representative is required in respect of making legal statements relating to adoption.

(3) Legal statements relating to adoption may be made by the legal representative of an incompetent person in his stead. A minor of sound mind under the age of fourteen years shall be heard by the guardian authority.

(4) The adoptive parent may not act as the legal representative of the adoptee in connection with the dissolution of adoption. In that case, the guardian authority shall appoint a caretaker officer to represent the minor adoptee.

TITLE XII PARENTAL CUSTODY

Chapter XVI

General Provisions Relating to Parental Custody

Section 4:146

[Legal status of minors; rights and obligations stemming from parental custody]

(1) Minor children are under parental custody or guardianship.

(2) Parental custody covers the right to select the minor child's name, to provide care, to determine the child's place of residence, to handle his/her financial affairs, including the right and obligation of representing the child in legal forums, and the right to exclude guardianship and other forms of social care.

Section 4:147

[Principles of exercising parental supervision]

(1) Parental supervision shall be exercised by the parents in collaboration with one another in the interest of the child's physical, intellectual and moral development.

(2) In exercising parental supervision jointly the rights and obligations of the parents shall be equal.

Section 4:148

[Involving children in the decision-making process]

The parents shall inform their child concerning the decisions that pertain to the child as well, and they shall permit the child of sound mind to express his/her views before the decision is made, and to partake in making the decision itself together with his/her parents in cases defined by law. The parents shall take the child's opinion into account, giving due weight consistent with the child's age and degree of maturity.

Section 4:149

[Limiting parental supervision in exceptional cases]

The court or other competent authority may restrict or withdraw the parent's rights of custody in exceptional and justified cases specified by law, where this is deemed necessary for the protection of the child's best interest.

Chapter XVII

Scope of Parental Custody

1. Naming the child

Section 4:150

[Selecting the child's name]


(1) The child shall be given - by agreement of the parents - the birth name or the married surname of his/her mother or father. If the parents are not married the child may not use the mother's married name from a previous marriage, if the mother uses that name with an indication of marital status. The child may use the parents' merged surname as his/her surname, even if the parents did not merge their surnames after the marriage, or if the parents did not marry. The surname of the child may consist of two segments at most.

(2) If the parents are married all common children born during their marriage shall have the same surname, except if the parents modified their surname during the marriage. If the parents use a common married name, their child may use the parents' common married name. If one of the parents uses their merged surname as a married name, the child shall be given - by agreement of the parents - the other parent's name without an indication of marital status or the parents' merged surname.

(3) If there is no person who should be considered the child's father, the child shall use his/her mother's surname accrued by birth or through marriage, with the exception if the mother uses the full name or surname of her husband with an indication of marital status.

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(4) The mother may request the guardian authority to enter an imagined person in the registry of births as the father of her minor child. In entering an imagined person as the father, the mother shall have the option to decide for the child to use the name of such imagined father. In the event of failing to supply a statement to that effect, the child shall retain use of the mother's name.

(5) If there is no person who should be considered the child's father, upon reaching the age of majority the child may request to enter an imagined person in the registry of births as his/her father - if it was not previously done - and may also request to have the name of the father shown in the registry removed. In that case, the child shall also have the option to decide whether or not he/she wishes to use the surname of the imagined father in the future.

(6) The forename of the child is determined by the parents.

Section 4:151

[Name given by the guardian authority]

(1) The guardian authority shall determine the child's name if:

a) the parents exercising parental supervision jointly fail to notify the guardian authority concerning their agreement on the child's surname and forename within thirty days of being asked to do so; or

b) both parents are unknown.

(2) The guardian authority shall determine the child's forename if the parent having the right of custody fails to decide on the child's forename despite being asked to do so by the registrar or the guardian authority, within thirty days of such request.

2. Care, training and instruction of children

Section 4:152

[Taking care of the child, selecting his/her home and residence]

(1) It is the parents' right and obligation to care for the child, and to provide the necessary conditions for the child's continuous maintenance and development.

(2) Parents shall provide a home for their child in their own household. Unless otherwise provided for by the court or the guardian authority, the child's place of residence shall be the parents' home even if the child temporarily resides elsewhere.

(3) The parent or the guardian authority shall have the right to demand the child be released by any person who unlawfully holds the child in custody.

(4) A child over the age of sixteen years shall be allowed to leave the parents' home or any other place of residence designated by the parents, with the guardian authority's authorization, without the parents' consent, if that is not contrary to his/her interest. Leaving the parents' home or any other place of residence designated by the parents shall not in itself affect parental custody, with the exception of personal care and upbringing.

(5) The agreement of both parents is required for the child's residence abroad for any extended period of time for the purpose of studies or work, or other similar reason, either by him/herself or together with one of the parents.

(6) Parental authorization is required for the child's moving to another country.

Section 4:153

[Raising and development of children, career guidance]

(1) The parents shall have the right to choose the path for the child's upbringing and development.

(2) Taking into account the child's abilities, the parents and the child shall jointly decide the possible path for the child's career.

(3) Any dispute arising between parent and child in connection with setting the career path and, in that context, with the child's education and schooling shall be decided by the guardian authority.

Section 4:154

[Involvement in caring for and raising the child by a person in direct contact with the child within the family]

Where a child is raised in a home of a person other than the parents, or in a home maintained by such person and the parents together, this person may be involved - by agreement of the parent having the right of custody - in exercising certain rights and obligations relating to caring for and raising the child.

3. Management of the assets of the child

Section 4:155

[Executors of the child's property]

(1) It is the right and obligation of the parents having rights of custody to manage all of the child's property which are not removed from their administration under this Act.

(2) If the child was given any property under the condition that his/her parents should be deprived of access to such property, the guardian authority shall appoint a trustee - taking into consideration the recommendation of the settlor - for the administration of such property (hereinafter referred to as „trustee“). If the third person granting the property excluded one of the parents from managing the property, the other parent otherwise entitled to manage the property shall manage the property.

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(2) The court or the guardian authority shall adopt a decision relating to visitation rights taking into account the child's age, health and living conditions, the parents' personal circumstances, as well as the opinion of the child of sound mind.

(3) The resolution of visitation rights shall provide for the time intervals of visits, the duration of such visits, whether visits are made systematically or periodically, any supervision that might be required during the visits, as well as the place where the child is collected and returned, the time and method of exchange, the notification obligation when the visit is cancelled and for rescheduling cancelled visits.

(4) If the right of visitation has been decided in court, subsequent changes may be requested from the court within two years after the operative date of the resolution.

Section 4:182

[Obligation to provide information; rescheduled visitation]

(1) The parties shall communicate to the other party without delay any obstacle that may arise in relation to visitation.

(2) If visitation is cancelled due to reasons beyond the beneficiary's control, it shall be rescheduled at the earliest available time, within six months at the latest.

Section 4:183

[Responsibility for preventing the exercise and violation of visitation rights]

(1) If the party having the right of visitation or the party who is to abide by such right obstructs the visits or violates the right of access without due cause, shall be liable to compensate the other party for damages.

(2) Upon request the guardian authority shall order the party who obstructs the visits or violates the right of access without due cause to cover the verifiable costs and expenses incurred in consequence of his/her actions to obstruct the visits or violating the right of access.

Section 4:184

[Restriction and withdrawal of rights of access]

The guardian authority or - in a matrimonial suit or action in connection with the exercise of certain rights of custody - the court may, in the interest of the child, restrict or withdraw the visitation rights of the parent or other person having the right of access, if engaged in any wrongful conduct.

Section 4:185

[Implementation of resolutions relating to visitation rights]

The responsibility for the implementation of resolutions relating to visitation rights lies with the guardian authority.

Chapter XIX

Suspension and Termination of Parental Custody Rights

1. Suspension of parental custody rights

Section 4:186

[Suspension of parental custody rights]

(1) Parental custody rights shall be suspended if:

- a) the parent is incompetent;
- b) the parent is a minor and of limited legal capacity, excluding the right and obligation of the minor parent over the age of sixteen years of caring for and upbringing the child;
- c) the parent's capacity in respect of exercising rights of custody has been partially limited;
- d) the parent cannot be located or effectively prevented in carrying out his/her parental responsibilities;
- e) the guardian authority approved the child's placement with a family;
- f) the parent has given consent for adoption of his/her child below the age of six weeks;
- g) the guardian authority took the child under foster care and the parent's right of custody did not terminate or had not been terminated by court order;
- h) the court ordered the placement of the child with a third party; or
- i) the parent is under the force of an injunction for an offense committed against the child or any family member living with the child in the same household.

(2) During life partnership parental custody rights shall be suspended in respect of the parent who lives together with the other parent who has been deprived of custody rights.

(3) Until the binding conclusion of an action for the termination of parental custody or an action brought in connection with the exercise of certain rights of custody, custody rights of a parent shall be suspended if the guardian authority temporarily placed his/her child with the other parent living separate and apart, with another person or an institution.

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Section 4:187

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[Temporary family placement]

(1) When requested by the parents exercising joint custody or by the parent having the right of custody, the guardian authority - upon hearing the other parent living separate and apart - may approve to temporarily place the child under the care of a family named by the requesting parent for health reasons, justified absence or other family reasons, provided that such temporary placement is in the child's best interest.

(2) The guardian authority shall approve temporary family placement if, based on his/her personality and other circumstances, the parent in the receiving family is considered suitable for caring for the child, for providing for his/her upbringing and for handling guardianship duties, and agrees to do so him/herself.

(3) The guardian authority shall confer guardianship duties upon the parent or parents of the receiving family.

Section 4:188

[Parent's rights and obligations in the case of temporary family placement]

(1) During the term of temporary family placement the parent's rights of custody shall be suspended.

(2) The parent shall have the right to maintain contact, as well as joint decision rights in major issues relating to the child's well-being.

(3) In particularly justified cases the guardian authority may delegate upon the parent the right of legal representation in financial management and in handling the child's financial affairs.

(4) Temporary family placement shall not affect the parent's maintenance obligation.

Section 4:189

[Review of temporary family placement]

(1) The guardian authority shall review annually the conditions underlying temporary family placement.

(2) The guardian authority shall terminate temporary family placement when so requested by the parent of the child or by the parent of the receiving family, or if maintaining it would be harmful to the child's development.

3. Cessation, termination and restoration of the parent's right of custody

Section 4:190

[Cessation of the parent's right of custody]

(1) Parental custody rights shall cease:

a) when the child reaches the age of majority;

b) upon the adoption of the child, except when the child is adopted by the parent's spouse;

c) if the parent has given consent for the adoption of the child, or if the parent has given consent for the adoption of his/her child below the age of six weeks, at the time the child reaches the age of six weeks, except if the parent has withdrawn the statement of consent; or

d) if the parent has abandoned the child - with a view to passing on the responsibility of raising the child - at a place designated by a medical institution, without revealing his/her identity, and did not come forward within six weeks to reclaim the child.

(2) If the parents have joint custody, in the event of death of either parent custody shall pass on to the surviving parent.

(3) In the event of death of the parent who had exclusive parental custody or exclusive right to exercise certain rights of custody, custody shall pass on to the surviving parent, provided that his/her right of custody was not terminated by court ruling.

(4) If custody passed on to the surviving parent in accordance with Subsection (3), the guardian authority shall call upon that parent to exercise parental custody rights. The surviving parent may not be called upon to exercise parental custody rights if his/her rights of custody are suspended on account of his/her incompetency or limited capacity due to his/her minority, if the parent's capacity in respect of exercising rights of custody has been partially limited, or because the parent cannot be located or effectively prevented in carrying out his/her parental responsibilities, or if this is manifestly contrary to the child's best interest.

Section 4:191

[Termination of the parent's right of custody by judicial process]

(1) The court shall terminate parental custody if:

a) the parent has engaged in any wrongful conduct causing serious injury to, or endangering the interest of, his/her child, including the child's physical integrity mental or moral development; or

b) the child was placed with another person or under foster care, and the parent whose right of custody was suspended failed - for reasons within his/her control - to make any changes in his/her life style and/or other circumstances, on account of which placement or foster care was ordered.

(2) If the parent was sentenced to imprisonment by court verdict for an intentional criminal offense committed against either of his/her children, the court shall have powers to deprive the parent of custody of all of his/her children. The above-specified court decision may also apply to any child yet to be born.

(3) A parent who has been deprived of custody rights by final court decision shall not be allowed to adopt a child or to accept the office of guardianship, to accept the placement of a child and - unless otherwise provided by the court or the guardian authority - to maintain contact with his/her child.

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Section 4:192

[Reinstatement of the parent's right of custody by judicial process]

If the reason under which the court ordered the termination of the parent's right of custody no longer exist, the court shall reinstate parent's right of custody, provided that there is no other reason for the termination thereof.

Section 4:193

[Persons entitled to bring action for the termination and reinstatement of parent's right of custody, respondents in actions]

(1) An action for the termination or reinstatement of parental custody may be brought, respectively, by the other parent for by both parents. In both cases the child, the guardian authority and the public prosecutor shall also be entitled to bring action.

(2) A minor of limited legal capacity and any parent whose capacity in respect of exercising rights of custody has been partially limited may bring action for the termination or reinstatement of parental custody in person, with the consent of his/her legal representative. If the parent or the child is incompetent, the action may be brought in his/her name by the legal representative with the guardian authority's consent.

(3) The action for the termination of parental custody shall be filed against the parent who is to be deprived of custody. The action for having parental custody restored shall be brought against the person at whose claim the court decided to terminate parental custody; if that person requests the reinstatement of parental custody, the action shall be brought against the other parent. If the party against whom the action is to be brought is no longer alive, the guardian ad litem appointed by the court shall be named as the defendant in the action.

(4) The judgment delivered in an action for the termination or reinstatement of parental custody shall apply to all parties involved.

**TITLE XIII
MAINTENANCE OF RELATIVES**

Chapter XX

Common Provisions Relating to the Maintenance of Relatives

Section 4:194

[Entitlement for maintenance]

(1) Any person who is unable to support him/herself through no fault of his/her own, and who has no spouse or former spouse who owes maintenance may claim maintenance from his/her relatives.

(2) A person of legal age shall be considered unworthy of maintenance if engaged in gross misconduct against the person owing maintenance or any resident family member, or pursues a lifestyle because of which maintenance cannot reasonably be expected from the person owing maintenance taking into account their relationship and the conduct of the person owing maintenance.

(3) If the parent fulfilled his/her obligation to maintain and care for the child and to provide for his/her upbringing, the child may allege unworthiness in the event of the parent's flagrant misconduct against him/her.

Section 4:195

[Ability to provide maintenance]

Unless otherwise provided for in this Act, a person shall not be obligated to support another person if this would seriously jeopardize his/her ability to provide for him/herself or for a person ranked higher in the chain of entitlement for maintenance.

Section 4:196

[Persons owing maintenance, chain of maintenance obligation]

(1) Unless otherwise provided for by this Act, maintenance obligation shall be conferred upon relatives in direct line with respect to each other.

(2) Maintenance obligation shall primarily prevail in the relation of the parent and his/her child and in the relation of the adult child and his/her parent in need support.

(3) If a child to whom maintenance is owed has no parent from whom to claim maintenance, his/her distant relatives in the ascending line shall be required to provide maintenance.

(4) If the person to whom maintenance is owed has no children, his/her distant relatives in the ascending line shall be required to provide maintenance.

(5) The maintenance obligation of any relative who is closer in the line of descent to the person to whom maintenance is owed shall precede that of the more distant relative.

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(6) The dependant to be supported may not claim maintenance from his/her relative alleging his/her inability to enforce maintenance claim from a person ranked higher in the chain of entitlement for maintenance due to his/her unworthiness.

Section 4:197

[Maintenance of siblings]

Any minor who has no relative in direct line from whom to claim maintenance shall be supported by his/her sibling of legal age, provided that such sibling is capable of doing so without jeopardizing his/her own maintenance and the maintenance of his/her spouse, domestic partner and any dependant relative in direct line.

Section 4:198

[Maintenance of stepchildren]

(1) The spouse shall provide support in his/her home to his/her spouse's dependant minor child (hereinafter referred to as „stepchild“) who was brought by his/her spouse to their common home with his/her consent.

(2) The stepparent's maintenance obligation shall not affect the biological parent's obligation to pay maintenance.

Section 4:199

[Maintenance of stepparents and foster parents]

(1) A stepchild shall be required to support his/her dependant stepparent if the stepparent had provided for his/her maintenance for a long time previously.

(2) A foster child shall be required to support under the conditions set out in Subsection (1) a person who had provided for his/her maintenance in his/her own home for a long time previously without receiving anything in exchange, and if such person is other than his/her biological, adoptive or stepparent (hereinafter referred to as „foster parent“).

Section 4:200

[Chain of entitlement for maintenance among blood relatives and in family relationships]

Entitlement for maintenance shall accrue:

- a) to blood children, stepchildren and foster children, in the same line; and
- b) to the biological parent and - if other legal requirements are satisfied - stepparent and foster parent, in the same line.

Section 4:201

[Division of maintenance obligations]

(1) Maintenance obligation shall be shared among several persons owing maintenance in the same line in proportion to their income and financial standing.

(2) If a person owing maintenance is exempted from maintenance obligation, his/her share of maintenance shall pass on to others in the same line, or failing this to persons owing maintenance ranked after them.

(3) Where a person owing maintenance provides care personally to the person to whom maintenance is owed, the related activities and other burdens shall be taken into consideration in determining the maintenance obligation.

Section 4:202

[Chain of entitlement for maintenance]

Where a person owes maintenance to more than one person, and he/she is unable to support all of them, in the chain of entitlement priority shall be given:

- a) to a minor child versus a child of legal age;
- b) to a child versus the spouse, former spouse and former domestic partner;
- c) to the spouse in line with the former spouse and former domestic partner versus the parent;
- d) to the parents in the same line versus other relatives; and
- e) of the other relatives, to the descendant versus relatives in the ascending line and to closer relatives versus distant ones.

Section 4:203

[Derogation from the chain of order]

Upon request the court may, where justified, derogate from the chain of entitlement for maintenance and from the chain of maintenance obligation.

Section 4:204

[Determining the amount and the means of maintenance]

The amount and the means of maintenance shall primarily be governed by the agreement between the person entitled to and the person owing maintenance. In the absence of an agreement, the entitled person may bring action to request the court to establish maintenance.


Section 4:205

[Amount of maintenance]

(1) The court shall determine the amount of maintenance upon due consideration of the entitled person's justified needs and on the financial ability of the person owing maintenance.

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(2) Justified needs shall cover the justified expenses and the costs of living of the person entitled to maintenance.

(3) The maintenance of a descendant and a minor sibling shall inter alia cover the costs of development and education.

(4) The obligation of maintenance of a relative in need of care due to his/her old age, health, disability or other reason shall cover the costs of nursing and care, as well as other related services which are deemed necessary.

(5) If the need of the person entitled to maintenance is limited, a supplemental support shall be provided. If the need of the person entitled to maintenance is absolute, but his/her relatives whose principle responsibility it is to provide maintenance are unable to provide support commensurate for his/her justified needs, a supplemental support may be requested from the relatives next in line.

(6) The maximum amount the person owing maintenance is required to provide shall not exceed half of his/her income.

Section 4:206

[Means of maintenance]

(1) Unless otherwise provided for in this Act, maintenance shall primarily be provided in money (hereinafter referred to as „alimony”).

(2) At the request of either of the parties, the court may order another form of maintenance if deemed justified based on the parties' circumstances, and if the other party does not object.

(3) Alimony shall be paid in advance for each time period.

Section 4:207

[Establishing the amount of alimony]

Alimony payments shall be established in a fixed amount. The court may order in its judgment that alimony payments should be adjusted each year automatically, from the first of January of the following year, based on the annual consumer price index published by the Központi Statisztikai Hivatal (*Central Statistics Office*).

Section 4:208

[Maintenance actions]

(1) An action for maintenance due to minors may be brought on the minor's behalf by the guardian authority, whereas an action for maintenance due to a parent may be brought on the parent's behalf - with his/her consent - by the district office as well.

(1a) * Where a person provides maintenance without any contractual or legal obligation to a parent in need of support instead of the parent's child legally obligated to do so, such person may demand compensation for the expenses arising in connection with providing such justified care from the child owing maintenance within a preclusive period of one year from the date when maintenance was actually provided.

(2) A relative owing maintenance, who him/herself provides maintenance and care, may bring action against the others who owe maintenance in his/her own right.

(3) A maintenance claim may be enforced in court with retroactive effect to a period more than six months previously if the entitled person was delayed with reasonable cause in enforcing the claim. No maintenance claim shall be enforced in court with retroactive effect to more than three years.

Section 4:209

[Duration of maintenance]

(1) Court-ordered maintenance payments are established for an indefinite duration.

(2) Maintenance payments may be ordered for a definite duration or pending certain condition, if there is reason to believe that the need of the person entitled to maintenance will cease after a certain period of time or under certain conditions.

Section 4:210

[Modification of the amount or the means of maintenance]

(1) In the event of any change in the circumstances underlying maintenance based on the agreement of the parties or court-ordered maintenance, where the provision of maintenance under the existing arrangement infringes upon the relevant lawful interest of either party, modification of the amount or the means of maintenance may be requested. Modification of agreement-based maintenance may not be requested by the party if he/she should have had calculated with the possibility of changes in the circumstances, or if the changes are attributable to his/her conduct.

(2) The organ or person responsible for making payments on behalf of the person owing maintenance shall be required to inform the entitled person - at his/her request - of the amount of wages and other benefits of the person owing maintenance.

Section 4:211

[Termination of the maintenance obligation]

(1) The person to whom the maintenance payments are in fact delivered is required to notify the court - and the person owing maintenance - if the entitled person is no longer in need of maintenance. The said person

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shall be held liable in accordance with the general provisions of civil law for damages caused by any breach of such obligations. Upon receipt of notice, the court shall order the termination of maintenance obligation without litigation.

(2) The person owing maintenance may request the termination of the maintenance obligation if the underlying conditions no longer apply due to changes in the relevant circumstances, or if the person entitled to maintenance failed comply with the notification requirement under Subsection (1).

Section 4:212

[Cessation of right to maintenance and the obligation to provide maintenance]

(1) The right to maintenance shall cease upon the death of the person entitled to maintenance, at the end of the fixed term or when the condition is met.

(2) The maintenance obligation shall terminate upon the death of the person owing maintenance. Any outstanding maintenance unpaid by the time of death of the person owing maintenance shall pass on the heir in accordance with the rules on liability for the debts under the succession.

Chapter XXI

Maintenance of Minor Children

Section 4:213

[Application of the provisions relating to maintenance of relatives]

The common provisions on the maintenance of relatives shall also apply to the obligation of parents to support their minor children subject to the exceptions set out in this Chapter.

Section 4:214

[Presumption of need]

The need of minor children for support shall be presumed. This presumption shall remain to apply until the child reaches the age of majority, not exceeding the age of twenty years, if the child is pursuing studies in a secondary school.

Section 4:215

[Obligation of parents to provide child support]

(1) Providing support for minor children shall precede the parent's own maintenance. This provision shall not apply if the justified necessities of the child are covered by his/her income acquired by gainful employment or by his/her earnings on assets, or if the child has any other relative in direct line from whom to claim maintenance.

(2) If the child's maintenance cannot be ensured as under Subsection (1), the guardian authority may authorize the parents to access the child's property and allocate funds to the extent required to cover the costs of his/her maintenance.

Section 4:216

[Means of child support]

(1) The parent caring for the child shall provide maintenance in kind, whereas the parent living separate and apart shall provide maintenance primarily in the form of money (hereinafter referred to as „child support“).

(2) The parent may be ordered to pay child support also if the child lives in his/her home, however, he/she does not provide for the child's maintenance.

Section 4:217

[Agreement of parents on child support]

(1) As regards the amount of child support and the means of payment shall in principle be governed by the agreement of the parents.

(2) By agreement of the parents, the parent living separate and apart from his/her child shall meet his/her maintenance obligation by providing assets of kind value or in a lump-sum payment. Such agreement shall be considered valid if it specifies the time period for which the child support is provided, and if it is approved by the guardian authority, or by the court in the case of court settlement.

(3) The court may award child support irrespective of the agreement referred to in Subsection (2) if deemed necessary in the child's best interest or to prevent any serious harm to the interest of either of the parties due to unforeseeable and considerable changes in the relevant circumstances.

Section 4:218

[Court-ordered child support]


(1) In the absence of an agreement between the parents, the court shall adjudicate child support.

(2) In determining the amount of child support the following shall be taken into consideration:

- a) the child's justified needs;
- b) the income and financial situation of both parents;
- c) other children - own, step or foster children - living in the parents' home, and the children whom are to be supported by the parents;
- d) the child's own income; and

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e) any child and family welfare benefits, and any allowances provided under the social security and similar system to the child and the parents on the child's behalf.

(3) The child's justified needs shall inter alia include the regular expenditures covering necessities of life, and the costs of his/her health care, education and development. In the event of any extraordinary expense arising in the child's interest, which cannot be covered from the child support even under due foresight, the person owing maintenance shall be required to cover a proportionate part of such expense as well.

(4) The amount of child support awarded shall generally be between fifteen and twenty-five per cent of the parent's average income for each child. The average income shall usually be calculated based on the total income of the parent acquired over a period of one year before the action was brought.

Chapter XXII

Maintenance of an Adult Child Pursuing Further Studies

Section 4:219

[Application of the provisions relating to maintenance of relatives and minor children]

The common provisions on the maintenance of relatives and the obligation of parents to support their minor children shall apply to the maintenance of adult children subject to the exceptions set out in this Chapter.

Section 4:220

[Entitlement of an adult student child for maintenance]

(1) Irrespective of presumption of need, adult children of working age pursuing further studies shall be entitled to maintenance, if considered justified for the pursuit of studies within a reasonable timeframe. The child shall inform his/her parent of his/her intention to pursue further studies without delay.

(2) The studies referred to in Subsection (1) shall cover continued training and education providing skills and qualifications for the planned career path, basic and masters training for acquiring a university or college degree, as well as post-secondary vocational education. Any interruption of studies beyond the child's control shall not affect the continuity of studies.

(3) The parent shall not be obligated to support his/her adult child pursuing further studies if:

a) the child is unworthy of support;

b) if the child fails to fulfill the obligation of studies and to take examinations on a regular basis, for reasons within his/her control; or

c) this would seriously jeopardize the parent's ability to provide for him/herself or for his/her minor child.

(4) A child of legal age shall be considered unworthy of maintenance if fails to maintain contact with the person owing maintenance without due cause.

(5) The parent may be obligated to provide maintenance for his/her child pursuing further studies over the age of twenty-five years under exceptional circumstances.

Section 4:221

[Amount of maintenance]

In determining the amount of maintenance the justified needs of the child pursuing further studies, the child's own income and financial situation and the grants and other benefits received for his/her studies as provided for by the relevant legislation, as well as the financial standing of the parents shall be taken into consideration.

Section 4:222

[Obligation of notification on the pursuit of studies]

The institution providing training and education for the child pursuing further studies shall inform the parent - upon request - required to provide maintenance concerning the child's progress in studies, or if studies are terminated.

PART FIVE GUARDIANSHIP

TITLE XIV APPOINTMENT OF A GUARDIAN

Section 4:223

[Minor child placed under guardianship]

A minor who is not under parental supervision shall be placed under guardianship.

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Section 4:224

[Responsibilities of the guardian]

Unless otherwise provided for by this Act, the guardian shall provide for the care and upbringing of the child, shall manage the child's property and shall function as the child's legal representative.

Section 4:225

[Reporting the need for the appointment of a guardian]

(1) The close relative of a minor child and the person who provides for the child shall forthwith notify the guardian authority if a guardian has to be appointed for the minor. The court and other authorities shall also notify the guardian authority if they accrue positive knowledge in the course of official proceedings that a guardian has to be appointed for a minor. Where there is a need for the appointment of a guardian, it may be notified by any person.

(2) The guardian authority shall appoint a guardian ex officio.

Section 4:226

[Designated guardian]

(1) The office of guardianship shall primarily accrue to a person designated by the parent having the right of custody in an authentic instrument or testamentary disposition as the guardian. Where both parents have the right of custody, and they named different guardians, the guardian authority shall appoint one of them in due consideration of the child's best interest.

(2) A designated guardian may be overlooked if:

- a) he refused the office of guardianship;
- b) he is excluded from the office of guardianship by this Act;
- c) he is unable to accept the office of guardianship; or
- d) his appointment is likely to harm the minor's interest.

Section 4:227

[Appointed guardian]

(1) If no guardian has been designated, the guardian authority shall primarily appoint a close relative as guardian, if such relative is considered suitable. If there is no such relative, the guardian authority shall appoint another family member as guardian, or a person deemed competent, preferably from among the persons who were previously involved in the child's upbringing.

(2) With the exception of protective guardianship, the guardian authority shall appoint a separate guardian for each minor. For siblings living in the same home the same person shall be appointed as guardian, provided that this is not contrary to the minors' best interest.

Section 4:228

[Taking into account the opinion of a child of sound mind]

In the process of appointment of a guardian, the opinion of a minor child of sound mind shall be taken into account, giving due weight consistent with the child's age and degree of maturity. A person whom the child over the age of fourteen years specifically and justifiably objected may not be appointed as guardian for that child.

Section 4:229

[Mandatory appointment of a guardian]


A person shall be appointed as guardian:

- a) if the guardian authority temporarily placed the child in his care;
- b) if the child was placed in his care by court order; or
- c) if he has accepted the child within the framework of family placement approved by the guardian authority.

Section 4:230

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[Protective guardianship]

A child shall, in particular, be placed under protective guardianship:

- a) ^{*} if he/she has been taken under custody;
- b) if he/she was temporarily placed under the care of child protection foster parents, in a children's home or other residential care institution, and an action for the termination of parental custody has been brought against his/her parent; or
- c) if his/her parent has given consent for the confidential adoption of his/her child.

Section 4:231

[Multiple guardianship]

(1) Under exceptional circumstances, more than one guardian may be appointed for a child. Multiple guardianship may be ordered if:

- a) the parents raising the child in their own home mutually agreed to accept guardianship;
- b) two close relatives of the minor under guardianship agreed to accept guardianship collectively;
- c) management of the assets or handling certain other matters of the child requires special expertise; or
- d) it is in the best interest of the child under protective guardianship.

(2) In the case provided for in Paragraph c) of Subsection (1), the guardian authority shall define specifically the sharing of duties among the guardians.

(3) If the guardian exceeds his powers, his legal statement shall be considered effective in dealings with third parties, however, the guardian shall compensate the person in his custody on the grounds of non-contractual liability.

Section 4:232

[Conditions for entering the office of guardianship]

(1) Any person of legal age may be appointed as guardian, who is not subject to the disqualifying factors defined in this Act, and who is considered suitable based on his personality and other circumstances.

(2) With the exception of protective guardianship, a person who accepts the office may be appointed as a guardian.

Section 4:233

[Exclusion from the office of guardianship]

(1) ^{*} The following may not be appointed to serve as a guardian:

- a) any person who is under guardianship or conservatorship;
- b) any person whose parental custody rights were terminated or who has been excluded from public affairs by court order;
- c) any person whose parental custody rights have been suspended upon the child being placed under foster care;
- d) any person whose child had been declared eligible for adoption; or
- e) any person whom the parent having the right of custody excluded by means of an authentic instrument or will.

(2) If the parent having the right of custody excluded from guardianship the person whom the other parent designated for the office of guardian, the guardian authority shall decide on the appointment in due consideration of the minor child's best interest.

**TITLE XV
EXERCISE OF GUARDIANSHIP**

Section 4:234

[Exercise of guardianship]

(1) The guardian shall carry out his responsibilities in the child's best interest. The guardian shall permit the child of sound mind to participate in the preparation of decisions pertaining to him/her and to express his/her views before such decisions are made.

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(2) Unless otherwise provided for in this Act, the provisions on the rights and obligations of the parent having the right of custody shall also apply to the rights and obligation of the guardian.

Section 4:235

[Limits of the guardian's responsibilities]

(1) The guardian shall not be entitled to determine or change the child's name, and may not issue a statement of consent for the adoption of the child.

(2) The approval of the guardian authority is required for the validity of statements made by the guardian, if the legal statements concerns the child's family status and bringing action in that context.

Section 4:236

[Rights and obligations of the guardian relating to financial affairs]

The guardian shall deliver to the guardian authority the child's money and other valuables, if such assets are not immediately required for ongoing expenses according to the principle of prudential management.

Section 4:237

[Supervision of the guardian by the guardian authority]

(1) The guardian shall carry out his/her functions under the regular supervision - or guidance in the case of protective guardianship - of the guardian authority. The guardian shall give information concerning his/her activity to the guardian authority at any time.

(2) The guardian authority may limit the guardian's authority in the child's interest, and may override his measures ex officio or at the request of the child under his custody or of the child's close relative. In this respect, the parent shall be treated as a close relative even if his/her right of parental custody has been suspended.

(3) The guardian authority shall consult with the guardian before making any decision pertaining to major issues of the child under guardianship, and shall hear the child of sound mind and - in justified cases - the child's close relatives as well.

Section 4:238

[Covering the costs and expenses of the guardian]

(1) Unless otherwise provided for in this Act, the benefits serving the child's life necessities shall be paid to the guardian.

(2) The guardian shall use the child's income for the child's maintenance only. If the child has no parent from whom to claim maintenance, the guardian authority may authorize the guardian to access the child's property and allocate funds to the extent required to cover the costs of his/her maintenance.

(3) The guardian may request compensation from the child's income for his justified costs and expenses incurred in connection with the child's maintenance. In the absence of sufficient income, the guardian authority shall provide compensation for said costs and expenses.

(4) Subsections (2)-(3) shall not apply in connection with protective guardianship.

Section 4:239

[Obligation of the guardian to give account]

(1) Unless otherwise provided for by this Act, the guardian shall give account of his financial management activities to the guardian authority once a year.

(2) If the income of the child under guardianship does not exceed the limit specified by the relevant legislation, the guardian authority may authorize the guardian to give account by the simplified procedure, with the exception of protective guardianship. If the office of guardianship is held by a close relative, the guardian may be exempted even from the obligation to give account by the simplified procedure.

(3) In justified cases other than the ones provided for in Subsections (1)-(2), the guardian authority shall be entitled to order the guardian - ex officio or if so requested by the child of limited legal capacity under guardianship, or by his/her family member - to give ad hoc accounts.

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TERMINATION OF GUARDIANSHIP AND THE OFFICE OF GUARDIAN

Section 4:240

[Termination of guardianship and the office of guardian]

(1) Guardianship shall terminate if the child under guardianship dies, placed under parental supervision or reaches the age of majority.

(2) The office of the guardian shall cease to exist:

- a) if guardianship is terminated;
- b) upon the guardian's death;
- c) upon the guardian's dismissal; or
- d) upon the guardian's removal.

Section 4:241

[Dismissal of the guardian]

(1) The guardian authority shall dismiss a guardian from office:

- a) if so requested by the guardian citing substantial reasons;
- b) the guardian proves incompetent for the office of guardianship; or
- c) the guardian authority gains knowledge, after the appointment, of any circumstance, or any subsequent hindrance on account of which the guardian is to be disqualified from holding the office of guardianship.

(2) The guardian authority may, under exceptional circumstances, relieve the guardian from office if another appears better suited to be appointed as guardian.

Section 4:242

[Removal of the guardian]

(1) The guardian authority shall remove the guardian from office, if the guardian abuses his functions, fails to fulfill his obligations or if he engages in conduct by which to cause serious injury to or endanger the interest of the child under guardianship, or on account of which the guardian is deemed unworthy of office.

(2) If there are reasonable grounds to believe that the guardian should be removed, and any delay is likely to entail a risk, the guardian authority shall suspend the guardian from office.

Section 4:243

[Obligations of the guardian upon the termination of guardianship]

(1) When his office is terminated, the guardian shall prepare a report on his activities and a final statement of account on the assets managed, and present it to the guardian authority.

(2) The claims arising out of or in connection with the guardian's obligation to give account shall lapse within one year from the date of delivery of the resolution releasing the guardian from the responsibility of asset management. If the party affected becomes aware of the reason underlying a claim at a later point in time, the deadline shall be reckoned from that time, provided that the claim has not yet lapsed under the statute of limitations.

Section 4:244

[Guardian's liability for damages]

The guardian shall be held liable for damages caused to the child under custody by his asset management actions in accordance with the general provisions on non-contractual liability.

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