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Translation provided by Brian Duffett.

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Act to Implement Certain Legal Instruments in the Field of International Family Law (International Family Law Procedure Act – IFLPA)

International Family Law Procedure Act in the version of the promulgation of 26 January 2005 (Federal Law Gazette [Bundesgesetzblatt] part I p. 162), most recently amended by Article 6 of the Act of 8 July 2014 (Federal Law Gazette [Bundesgesetzblatt] part I p. 890)

Division 1

Scope of application; definitions

Section 1

Scope of application

This Act shall serve

1. to execute Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000 (OJ EU No. L 338 p. 1);
2. to implement the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (Federal Law Gazette [Bundesgesetzblatt] 2009 part II p. 602) – hereinafter referred to as the Hague Child Protection Convention;
3. to implement the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (Federal Law Gazette [Bundesgesetzblatt] 1990 part II p. 207) – hereinafter referred to as the Hague Child Abduction Convention;
4. to implement the Luxembourg European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (Federal Law Gazette [Bundesgesetzblatt] 1990 part II p. 220) - hereinafter referred to as the European Custody Convention.

Section 2

Definitions of terms

For the purposes of this Act the term “title” shall mean decisions, agreements and public documents in respect of which there is application of the EC Regulation needing execution or the respective Convention needing implementation.

Division 2

Central Authority; Youth Welfare Office

Section 3

Designation of the Central Authority

(1) The Central Authority under

1. Article 53 of Regulation (EC) No. 2201/2003,
2. Article 29 of the Hague Child Protection Convention,
3. Article 6 of the Hague Child Abduction Convention,
4. Article 2 of the European Custody Convention

shall be the Federal Office of Justice.

(2) The proceedings before the Central Authority shall be deemed to be a judicial administrative proceeding.

Section 4

Translations in the case of incoming applications

(1) The Central Authority receiving an application from another State, pursuant to the Regulation (EC) No. 2201/2003 or to the European Custody Convention, may refuse to take action so long as communications or documents that have to be enclosed are not drawn up in German or accompanied by a translation into German.

(2) Where by way of exception a document is not accompanied by a German translation pursuant to Article 54 of the Hague Child Protection Convention or to Article 24, first paragraph, of the Hague Child Abduction Convention, the Central Authority shall arrange for a translation.

Section 5

Translations in the case of outgoing applications

(1) Where the applicant does not himself procure translations required for applications that are to be dealt with in another State, the Central Authority shall arrange for the translations at the applicant's expense.

(2) The Local Court shall, upon application being made, exempt an applicant who is a natural person having his or her habitual residence or, in the absence of such residence, actually residing within the district of the Court, from the duty of reimbursement pursuant to subsection (1) if the applicant fulfils the personal and financial requirements for the grant of legal aid, without his or her having to make a contribution towards the costs pursuant to the provisions of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction.

Section 6

Performance of tasks by the Central Authority

(1) For the purpose of fulfilment of the tasks incumbent on it the Central Authority shall take all necessary measures with the assistance of the competent agencies. It shall correspond directly with all competent agencies in Germany and abroad. Communications shall be forwarded without delay to the competent agencies.

(2) For the purpose of implementing the Hague Child Abduction Convention and the European Custody Convention the Central Authority shall commence court proceedings if necessary. Within the framework of these Conventions the Central Authority shall, for the purpose of returning a child, be deemed to be authorised, on behalf of the applicant, to take action in or out of court, either on its own or by power of attorney delegated to persons representing it. Its authority to take relevant action, on its own behalf, in order to secure compliance with the Conventions shall remain unaffected.

Section 7

Ascertainment of whereabouts

- (1) The Central Authority shall take all necessary measures including bringing in the police enforcement authorities to ascertain the child's whereabouts in cases where the child's place of abode is unknown and there are indications to the effect that the child is in Germany.
- (2) So far as is necessary for ascertainment of the child's whereabouts, the Central Authority shall be authorised to collect vehicle keeper data required, pursuant to section 33 subsection (1), first sentence number 2, of the Road Traffic Act, at the Federal Motor Transport Authority, and to request the providers of benefits, within the meaning of sections 18 to 29 of the First Book of the Social Code, for notification of a person's current whereabouts.
- (3) Under the conditions stated in subsection (1) the Central Authority can cause issuance, by the Federal Criminal Police Office, of a notice for ascertainment of a person's whereabouts. It can also initiate the storage of a search notice in the Central Register.
- (4) So far as other agencies are brought in, the Central Authority shall transmit such personal data to these agencies as are necessary for carrying out the measures; such data may only be used for the purpose for which they were transmitted.

Section 8

Recourse to the Higher Regional Court

- (1) Where the Central Authority does not accept an application or where it refuses to take action, an application for a decision can be made to the Higher Regional Court.
- (2) The Higher Regional Court in whose district the Central Authority has its seat shall have jurisdiction.
- (3) The Higher Regional Court shall give a decision in proceedings for non-contentious matters. Section 14 subsections (2) and (3) as well as divisions 4 and 5 of the First Book of the Act on proceedings in family matters and in matters of non-contentious jurisdiction shall apply *mutatis mutandis*.

Section 9

Youth Welfare Office participation in proceedings

- (1) Without prejudice to the responsibilities of the Youth Welfare Office in relation to cross-border co-operation, the Youth Welfare Office shall assist the courts and the Central Authority in respect of all measures taken under this Act. In particular it shall
 1. give information, upon request, regarding the social background of the child and his or her environment,
 2. support an amicable resolution in every situation,
 3. give assistance, in appropriate cases, in the conduct of proceedings, also in relation to securing the child's residence,
 4. give assistance, in appropriate cases, in the exercise of the right of personal access, in the delivery or return of the child as well as in the enforcement of court decisions.
- (2) Competence shall lie with the Youth Welfare Office in whose area the child habitually resides. Where the Central Authority or a court is seized of an application for delivery or return or the enforcement thereof, or where the child does not habitually reside in Germany, or where the competent Youth Welfare Office does not take action, competence shall lie with the Youth Welfare Office in whose district the child is actually residing. In the cases of Article 35 paragraph 2, first sentence, of the Hague Child Protection Convention, local jurisdiction shall lie with the Youth Welfare Office in whose area of jurisdiction the applicant parent habitually resides.
- (3) The court shall inform the competent Youth Welfare Office about decisions pursuant to this Act also in those cases where the Youth Welfare Office was not involved in the proceedings.

Division 3
Court jurisdiction and concentration of jurisdiction

Section 10
Local jurisdiction over recognition and enforcement

Exclusive local jurisdiction shall lie in respect of proceedings

– pursuant to Article 21 paragraph 3 and Article 48 paragraph 1 of Regulation (EC) No. 2201/2003 as well as for compulsory enforcement pursuant to Articles 41 and 42 of Regulation (EC) No. 2201/2003,

– pursuant to Articles 24 and 26 of the Hague Child Protection Convention,

– pursuant to the European Custody Convention

with the Family Court in whose area of jurisdiction at the time the application is made

1. the person against whom the application is directed, or the child to which the decision relates, habitually resides, or
2. in the absence of jurisdiction pursuant to number 1, the interest arises in respect of the finding or the need for care exists,
3. otherwise, in the district of Berlin Higher Regional Court, with the court that has been appointed to decide.

Section 11
Local jurisdiction pursuant to the Hague Child Abduction Convention

In respect of proceedings pursuant to the Hague Child Abduction Convention, local jurisdiction shall lie with the Family Court in whose area of jurisdiction

1. the child was residing upon receipt of the application at the Central Authority, or
2. in the absence of jurisdiction pursuant to number 1, the need for care exists.

Section 12
Concentration of jurisdiction

(1) In proceedings on a matter referred to in sections 10 and 11 as well as in proceedings on the declaration of enforceability pursuant to Article 28 of Regulation (EC) No. 2201/2003, the decision shall lie with the Family Court in whose district a Higher Regional Court has its seat for the district of such Higher Regional Court.

(2) In the district of Berlin Higher Regional Court the decision shall lie with Pankow/Weißensee Family Court.

(3) The state governments shall be authorised to assign this jurisdiction, by ordinance, to another Family Court in the Higher Regional Court district or, where there is more than one Higher Regional Court established in a state, to a Family Court for the districts of all Higher Regional Courts or of more than one Higher Regional Court. The state governments can transfer this power of authorisation to the state administrations of justice.

Section 13
Concentration of jurisdiction over other family matters

(1) The Family Court where a matter referred to in sections 10 to 12 becomes pending shall, from that moment onwards and notwithstanding section 137 subsections (1) and (3) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction, have jurisdiction over all family matters, concerning the same child, pursuant to section 151, number 1 to 3, of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction, including directions pursuant to section 44 and to sections 35 and 89 to 94 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction. Jurisdiction pursuant to subsection (1), first sentence, shall not arise in cases

where the application is manifestly inadmissible. Jurisdiction shall cease as soon as the court addressed is not competent by virtue of an incontestable decision; proceedings over which such court thus loses its jurisdiction shall, in accordance with section 281 subsections (2) and (3), first sentence, of the Civil Procedure Code, be transferred *proprio motu* to the court with jurisdiction.

(2) Another family matter pursuant to section 151, number 1 to 3, of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction can also be brought before the Family Court with jurisdiction over applications of the kind referred to in subsection (1), first sentence, in the Higher Regional Court district where the child habitually resides, provided that a parent habitually resides in another Member State of the European Union or in another contracting State of the Hague Child Protection Convention, of the Hague Child Abduction Convention or of the European Custody Convention.

(3) In the case of subsection (1), first sentence, another Family Court where a family matter, concerning the same child, pursuant to section 151, number 1 to 3, of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction is, or becomes, pending at first instance, shall transfer such proceedings *proprio motu* to the court having jurisdiction pursuant to subsection (1), first sentence. Upon concurrent application by both parents, other family matters in which they are participants shall be transferred to the court having jurisdiction pursuant to subsection (1) or subsection (2). Section 281 subsection (2), first to third sentence, and subsection (3), first sentence, of the Civil Procedure Code shall apply *mutatis mutandis*.

(4) On important grounds the Family Court having jurisdiction pursuant to subsection (1) or subsection (2) or the Family Court to which the matter has been transferred pursuant to subsection (3) can transfer, or refer back, such matter to the Family Court that has jurisdiction pursuant to general provisions, provided that this does not lead to a substantial delay in the proceedings. As a rule, an important ground shall be deemed to exist where the particular expertise of the first court referred to above is not, or no longer, required for the proceedings. Section 281 subsections (2) and (3), first sentence, of the Civil Procedure Code shall apply *mutatis mutandis*. Refusal to effect a transfer pursuant to the first sentence shall be incontestable.

(5) Section 4 and section 5 subsection (1), number 5, subsections (2) and (3) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction shall remain unaffected.

Section 13a

Proceedings on cross-border transfer

(1) Where pursuant to Article 8 of the Hague Child Protection Convention the Family Court requests the court of another contracting State to assume jurisdiction, it shall set a time limit within which the foreign court can notify its assumption of jurisdiction. Where pursuant to Article 8 of the Hague Child Protection Convention the Family Court suspends proceedings, it shall set the parties a time limit within which the foreign court is to be addressed. If the time limit pursuant to the first sentence has expired without the foreign court having notified its assumption of jurisdiction, it shall as a rule be assumed that the requested court has refused to assume jurisdiction. If the time limit pursuant to the second sentence has expired without a party having addressed the foreign court, jurisdiction shall remain with the Family Court. The court of the requested State and the parties shall be notified of these legal consequences.

(2) Where pursuant to Article 8 of the Hague Child Protection Convention a court of another contracting State requests the Family Court to assume jurisdiction, or where a party addresses the Family Court in pursuance of that provision, the Family Court can assume jurisdiction within six weeks.

(3) Subsections (1) and (2) shall be applied *mutatis mutandis* to applications, requests and decisions pursuant to Article 9 of the Hague Child Protection Convention.

(4) The Family Court decision

1. to request the foreign court, pursuant to subsection (1), first sentence, or pursuant to Article 15 paragraph 1 letter (b) of Regulation (EC) No. 2201/2003, to assume jurisdiction;
 2. to suspend proceedings, pursuant to subsection (1), second sentence, or pursuant to Article 15 paragraph 1 letter (a) of Regulation (EC) No. 2201/2003;
 3. to request the foreign court with jurisdiction, in pursuance of Article 9 of the Child Protection Convention or pursuant to Article 15 paragraph 2 letter (c) of Regulation (EC) No. 2201/2003, to transfer jurisdiction;
 4. to invite the parties to introduce a request to the foreign court with jurisdiction, pursuant to Article 9 of the Hague Child Protection Convention, for the transfer of jurisdiction to the Family Court; or
 5. to transfer jurisdiction to the foreign court, upon request by a foreign court or application by the parties pursuant to Article 9 of the Hague Child Protection Convention,
- shall be contestable by immediate complaint, upon application *mutatis mutandis* of sections 567 to 572 of the Civil Procedure Code. A complaint on a point of law shall be precluded. The decisions referred to in the first sentence shall come into effect only when they become binding with final legal force. This shall be indicated in the order.
- (5) Otherwise the decisions pursuant to Articles 8 and 9 of the Hague Child Protection Convention and pursuant to Article 15 of Regulation (EC) No. 2201/2003 shall be incontestable.
- (6) Parties within the meaning of this provision, of Articles 8 and 9 of the Hague Child Protection Convention and of Article 15 of Regulation (EC) No. 2201/2003 shall be the participants referred to in section 7 subsections (1) and (2), number 1, of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction. The provisions on the involvement of further participants shall remain unaffected.

Division 4 General rules of court

Section 14 Family Court proceedings

Unless otherwise provided, the Family Court shall give a decision

1. on a matrimonial matter referred to in sections 10 and 12 pursuant to the provisions of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction applying thereto,
2. on the remaining matters referred to in sections 10, 11, 12 and 47 as family matters in proceedings of non-contentious jurisdiction.

Section 15 Provisional orders

Upon application or *proprio motu*, the court can make provisional orders in order to avert risks from the child or to avoid detriment to the interests of the participants, and especially to secure the child's abode during the proceedings, or to prevent the child's return from being obstructed or made difficult; division 4 of the First Book of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction shall apply *mutatis mutandis*.

Division 5 Admission of compulsory enforcement, recognition finding and restoration of custody of children

Subdivision 1
Admission of compulsory enforcement at first instance

Section 16
Application

(1) With the exception of the titles referred to in Articles 41 and 42 of Regulation (EC) No. 2201/2003 the title enforceable in another State shall become admissible for compulsory enforcement when, upon application, it is furnished with the endorsement for enforcement.

(2) The application for grant of endorsement for enforcement can be submitted to the Family Court with jurisdiction, in writing or orally to be recorded by the registry.

(3) Where contrary to section 184 of the Courts Constitution Act the application is not drawn up in German, the court can enjoin the applicant to procure a translation of the application, the accuracy of which has been confirmed by a person having the authority to provide such confirmation

1. in a Member State of the European Union or
2. in another contracting State of a Convention needing implementation.

Section 17
Person authorised to accept service

(1) Where in his or her application the applicant has not designated a person authorised to accept service, within the meaning of section 184 subsection (1), first sentence, of the Civil Procedure Code, every service on the applicant can, until subsequent designation, be effected by postage (section 184 subsection [1], second sentence, subsection [2] of the Civil Procedure Code).

(2) Subsection (1) shall not apply where the applicant has appointed a representative for the proceedings, upon whom service can be effected in Germany.

Section 18
Ex parte proceedings

(1) Within the scope of application of Regulation (EC) No. 2201/2003 and of the Hague Child Protection Convention it shall be the applicant alone, in proceedings at first instance for admission of compulsory enforcement, who receives the opportunity to make statements. The decision shall be given without holding an oral hearing. However, there can be an oral discussion with the applicant or a person authorised by the applicant, provided the applicant or the person so authorised agrees thereto and the discussion serves the purpose of expedition.

(2) Notwithstanding section 114 subsection (1) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction, representation by a lawyer shall not be required in matrimonial matters at first instance.

Section 19
Special provisions regarding the European Custody Convention

A declaration of enforceability of a title from another contracting State of the European Custody Convention shall also be precluded in the cases of Articles 8 and 9 if the conditions referred to in Article 10 paragraph 1 letter a or b of the Convention subsist, in particular where the effects of the title would be incompatible with the basic rights of the child or of a person having custody.

Section 20
Decision

(1) Where compulsory enforcement based on the title is to be admitted, the court shall order that the title be furnished with the endorsement for enforcement. In the order, the obligation to be enforced is to be described in German. It shall as a rule suffice, in giving the reasons for the order, for reference to be made to Regulation (EC) No. 2201/2003 or to the treaty on

recognition and enforcement, which is to be implemented, as well as to the documents submitted by the applicant.

(2) Section 81 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction shall be applied *mutatis mutandis* to the costs of the proceedings; in matrimonial matters section 788 of the Civil Procedure Code shall apply *mutatis mutandis*.

(3) Where the application is not admissible or not well-founded, the court shall refuse the application in an order setting out the reasons. Subsection (2) shall apply to the costs; in matrimonial matters the costs shall be imposed on the applicant.

Section 21

Notification of the decision

(1) In the case of section 20 subsection (1) service shall be effected *proprio motu* on the obligor of a certified copy of the order, of a certified copy of the title that does not yet bear the endorsement for enforcement and, if necessary, the translation thereof, as well as of the documents to which reference is made in pursuance of section 20 subsection (1), third sentence. An order made pursuant to section 20 subsection (3) shall be communicated informally to the obligor.

(2) A certified copy of the order made pursuant to section 20 and, in the case of section 20 subsection (1), also an attestation of the effected service shall be sent to the applicant. The authentic issue of the title, bearing the endorsement for enforcement shall be sent to the applicant only when the order made pursuant to section 20 subsection (1) has come into effect and the endorsement for enforcement has been granted.

(3) In proceedings on the declaration of enforceability of a decision concerning parental responsibility, service shall be effected also on the child's statutory representative, on the child's representative in the proceedings, on the child him- or herself, so far as he or she has reached the age of 14 years, on a parent who was not a participant in the proceedings, as well as on the Youth Welfare Office.

(4) Where the measure declared to be enforceable concerns a placement, the order shall also be notified to the head of the institution or the foster family in which the child is to be placed.

Section 22

Decision coming into effect

(1) An order made pursuant to section 20 shall come into effect only when it becomes binding with final legal force. This shall be indicated in the order.

(2) Subsection (1) shall not apply to an order in which the placement of a child, linked with deprivation of liberty, is declared enforceable pursuant to Article 56 of Regulation (EC) No. 2201/2003. In this case, the court shall make an order imposing the immediate effect of the order. Section 324 subsection (2), second and third sentences, of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction shall apply *mutatis mutandis*.

Section 23

Endorsement for enforcement

(1) On the basis of an effective order made pursuant to section 20 subsection (1) the registry clerk shall grant the endorsement for enforcement in the following form:

“Endorsement for enforcement pursuant to section 23 of the International Family Law Procedure Act of 26 January 2005 (Federal Law Gazette [*Bundesgesetzblatt*] part I p. 162). In pursuance of the order of ... (designation of the court and of the order) compulsory enforcement based on ... (designation of the title) shall be admissible for the benefit of ... (designation of the obligee) against ... (designation of the obligor).

The obligation to be enforced reads as follows:

... (indication in German of the obligation, based on the foreign title, incumbent on the obligor; to be taken from the order made pursuant to section 20 subsection [1]).”

(2) Where compulsory enforcement is admitted only in respect of one, or more than one, claim granted by the foreign title or set down in another foreign title, or only in respect of part

of the subject matter of the obligation, the endorsement for enforcement shall be designated as “part endorsement for enforcement pursuant to section 23 of the International Family Law Procedure Act of 26 January 2005 (Federal Law Gazette [*Bundesgesetzblatt*] part I p. 162)”.
(3) The endorsement for enforcement shall be signed by the registry clerk and shall be stamped with the court stamp. Such endorsement shall be made either on the authentic issue of the title or on a page to be joined thereto. If there is a translation of the title, it shall be joined to the authentic issue thereof.

Subdivision 2 Complaint

Section 24

Filing a complaint; time limit for a complaint

- (1) A complaint can be filed against a decision given at first instance with the Higher Regional Court. The complaint shall be filed with the Higher Regional Court by submission of a notice of complaint or by declaration to be recorded by the registry.
- (2) The admissibility of the complaint shall not be affected by the fact that it has been filed with the court of first instance instead of with the Higher Regional Court; without delay the complaint shall be transferred *proprio motu* to the Higher Regional Court.
- (3) A complaint against the admission of compulsory enforcement shall be filed
1. within one month after service in a case where the person entitled to file a complaint habitually resides in Germany;
 2. within two months after service in a case where the person entitled to file a complaint habitually resides abroad. The time limit shall begin to run on the day on which the declaration of enforceability is served on the person entitled to file a complaint, either in person or at his or her dwelling. An extension of this time limit on the ground of long distance shall be precluded.
- (4) The time limit for a complaint shall be a mandatory time limit.
- (5) The complaint shall be served on the respondent *proprio motu*.
- (6) In the case of section 22 subsection (2), the court hearing the complaint may issue an order suspending the enforcement of the contested decision.

Section 25

Objections to the claim to be enforced

Through a complaint against the admission of compulsory enforcement based on a title concerning reimbursement of the costs of proceedings, the obligor can also make objections to the claim itself in a case where the grounds on which the objections are based originated only after the title was issued.

Section 26

Proceedings and decision on the complaint

- (1) The Higher Regional Court Panel shall pronounce its decision in an order for which reasons shall be stated and which can be given without holding an oral hearing.
- (2) So long as no order has been made for an oral hearing, applications can be made, and statements given, to be recorded by the registry. Where an order is made for an oral hearing in a matrimonial matter, section 215 of the Civil Procedure Code shall apply to the summons.
- (3) A complete authentic issue of the order shall then also be served on the participants *proprio motu* when the order has been pronounced.
- (4) Section 20 subsection (1), second sentence, subsections (2) and (3), section 21 subsections (1), (2) and (4) as well as section 23 shall apply *mutatis mutandis*.

Section 27

Order for immediate effect

- (1) A Higher Regional Court order made pursuant to section 26 shall come into effect only when it becomes binding with final legal force. This shall be indicated in the order.
- (2) In conjunction with the decision on the complaint the Higher Regional Court can make an order imposing the immediate effect of an order.

Subdivision 3
Complaint on a point of law

Section 28
Complaint on a point of law permitted

Pursuant to section 574 subsection (1), number 1, subsection (2) of the Civil Procedure Code, a complaint may lie to the Federal Court of Justice on a point of law in respect of such Higher Regional Court order.

Section 29
Filing, and grounds for, a complaint on a point of law

Section 575 subsections (1) to (4) of the Civil Procedure Code shall be applied *mutatis mutandis*. So far as a complaint on a point of law is based on the argument that the Higher Regional Court has diverged from a decision of the Court of Justice of the European Communities, the decision from which the contested order diverges must be designated.

Section 30
Proceedings and decision on a complaint on a point of law

- (1) The Federal Court of Justice can only examine whether the order concerned is based on a violation of the law of the European Community, of a recognition and enforcement treaty, of other federal law or of another provision in force for an area extending beyond the district of a Higher Regional Court. The Federal Court of Justice shall not be allowed to examine whether the court wrongly assumed that it had local jurisdiction.
- (2) The Federal Court of Justice can give a decision on a complaint on a point of law without holding an oral hearing. Section 574 subsection (4), section 576 subsection (3) and section 577 of the Civil Procedure Code shall be applied *mutatis mutandis*; in matters of non-contentious jurisdiction section 574 subsection (4) and section 577 subsection (2), first to third sentence, of the Civil Procedure Code as well as the reference made to section 556 in section 576 subsection (3) of the Civil Procedure Code shall be disregarded.
- (3) Section 20 subsection (1), second sentence, subsections (2) and (3), section 21 subsections (1), (2) and (4) as well as section 23 shall apply *mutatis mutandis*.

Section 31
Order for immediate effect

Upon application being made by the obligor, the Federal Court of Justice can revoke an order made pursuant to section 27 subsection (2), or it can make an initial order pursuant to section 27 subsection (2) upon application being made by the obligee.

Subdivision 4
Establishment of recognition

Section 32
Recognition finding

Subdivisions 1 to 3 shall be applied *mutatis mutandis* to proceedings on a separate application for a finding pursuant to Article 21 paragraph 3 of Regulation (EC) No. 2201/2003, pursuant to Article 24 of the Hague Child Protection Convention or pursuant to the European Custody Convention, to recognise or not to recognise, a title from another State. In this case Section 18 subsection (1), third sentence, shall be applied subject to the condition that the oral discussion can also take place with further participants.

Subdivision 5
Restoration of custody of children

Section 33
Order to deliver the child

(1) Where, pursuant to the law of the State in which it was established, an enforceable title, in the scope of application of Regulation (EC) No. 2201/2003, of the Hague Child Protection Convention or of the European Custody Convention, embraces the right to delivery of the child, the Family Court can, for clarification, include the order for delivery of the child in the endorsement for enforcement or in an order made pursuant to Section 44.

(2) Where there is no enforceable title, in the scope of application of the European Custody Convention, to delivery of the child, the court shall make a finding, pursuant to section 32, that there shall be recognition of the custody decision or the custody agreement from the other contracting State approved by the competent authority, and the court shall, upon application being made, order the obligor to deliver the child for the purpose of restoring custody of the child.

Subdivision 6
Revocation or amendment of orders

Section 34
Proceedings for revocation or amendment

(1) Where the title is revoked or amended in the State in which it was established and the obligor can no longer plead this fact in the proceedings for admission of compulsory enforcement, the obligor can apply for revocation or amendment of admission in separate proceedings. The same shall apply in the event of revocation or amendment of decisions, agreements or public documents the recognition of which has been established.

(2) In respect of the decision on such application, exclusive jurisdiction shall lie with the Family Court that decided at first instance on the application for grant of endorsement for enforcement or that made the first-instance finding of recognition.

(3) The application can be made to the court in writing or by declaration to be recorded by the registry. The decision shall be given in an order.

(4) Subdivisions 2 and 3 shall be applied to a complaint *mutatis mutandis*.

(5) In the case of a title concerning reimbursement of the costs of the proceedings sections 769 and 770 of the Civil Procedure Code shall be applied *mutatis mutandis* to termination of compulsory enforcement and to revocation of enforcement measures already taken.

Revocation of an enforcement measure shall be permissible also in the absence of provision of security.

Section 35
Compensation for unjustified enforcement

(1) Where admission of compulsory enforcement based on a title concerning reimbursement of the costs of the proceedings has been revoked or amended upon a complaint made on a point of law, the obligee shall be bound to make compensation for the damage caused to the obligor by enforcement of the title or by a cost incurred to avert enforcement. The same shall apply where the admission of compulsory enforcement is revoked or amended pursuant to section 34, so far as the title admitted for compulsory enforcement could still be contested, at the time of its admission, by ordinary appellate remedy under the law of the State in which it was issued.

(2) In respect of claims brought, exclusive jurisdiction shall lie with the court that decided at first instance on the application for the title to be furnished with the endorsement for enforcement.

Subdivision 7
Court action to oppose enforcement

Section 36
Court action to oppose enforcement in respect of titles concerning the costs of the proceedings

(1) Where there is admission of compulsory enforcement based on a title concerning the costs of the proceedings, the obligor can make objections to the claim itself in proceedings pursuant to section 767 of the Civil Procedure Code only in a case where the grounds on which his or her objections are based originated

1. after expiry of the time limit within which the obligor could have filed a complaint, or

2. if a complaint has been filed, after conclusion of these proceedings.

(2) A court action pursuant to section 767 of the Civil Procedure Code shall be brought in the court that decided on the application for grant of endorsement for enforcement.

Division 6 Proceedings pursuant to the Hague Child Abduction Convention

Section 37 Applicability

Where in an individual case the return of the child can be considered pursuant to the Hague Child Abduction Convention and to the European Custody Convention, the provisions of the Hague Child Abduction Convention shall initially be applied, so far as the applicant does not make express application for the European Custody Convention to apply.

Section 38 Expedited proceedings

(1) The court shall deal with proceedings for the return of a child with priority at all instances. Except in the case of Article 12 paragraph 3 of the Hague Child Abduction Convention there shall be no stay of the proceedings. The court shall apply all measures needed to expedite the proceedings, also to enable, in particular, the decision on the merits to be given within the time limit set in Article 11 paragraph 3 of Regulation (EC) No. 2201/2003.

(2) At every stage of the proceedings the court shall examine whether the right of personal access to the child can be ensured.

(3) The participants shall assist in establishing the facts, in conformity with a procedure that is intent on advancing and expediting the proceedings.

Section 39 Transmission of decisions

Where, pursuant to Article 11 paragraph 6 of Regulation (EC) No. 2201/2003, a domestic decision is transmitted directly to the court with jurisdiction or the Central Authority abroad, a copy shall be sent to the Central Authority for the discharge of its functions pursuant to Article 7 of the Hague Child Abduction Convention.

Section 40 Effect of the decision; appellate remedy

(1) A decision requiring the return of a child to another contracting State shall come into effect only when it becomes binding with final legal force.

(2) A complaint can be filed in respect of a decision given at first instance to the Higher Regional Court, pursuant to subdivision 1 of division 5 of the First Book of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction; section 65 subsection (2), section 68 subsection (4) as well as section 69 subsection (1), second to fourth sentence, of that Act shall not be applied. The complaint shall be filed, and grounds shall be stated therefor, within two weeks. The right of complaint against a decision requiring the return of a child shall vest in the person opposing the application, in the child, so far as he or she has reached the age of 14 years, and in the Youth Welfare Office concerned. A complaint on a point of law shall not be admissible.

(3) Upon receipt of the notice of complaint, the court hearing the complaint shall examine, without delay, whether there is to be an order for the immediate effect of the contested

decision on returning the child. Immediate effect should be ordered where the complaint is manifestly ill-founded or where returning the child before the decision on the complaint is compatible with the best interests of the child while taking into account the legitimate interests of the participants. The decision on immediate effect can be amended during the proceedings on the complaint.

Section 41 **Determination of wrongfulness**

The decision on an application for a finding to the effect that the removal or retention of the child was wrongful pursuant to Article 15, first sentence, of the Hague Child Abduction Convention shall lie with the Family Court

1. where the child custody matter or matrimonial matter is, or was, pending at first instance, otherwise with the Family Court
2. in whose district the child had his or her last habitual residence in the area for which this Act is in force, alternatively with the Family Court
3. in whose district the need for care arises.

Reasons shall be stated for the decision.

Section 42 **Submission of applications to the Local Court**

(1) An application that is to be dealt with in another contracting State can also be submitted to the Local Court, as the authority for the administration of justice, in whose district the applicant has his or her habitual residence, or where, in the absence of such residence in the area for which this Act is in force, the applicant is actually residing. After examining the requirements as to form, the court shall transmit the application, without delay, to the Central Authority, who will forward it to the other contracting State.

(2) Except in cases pursuant to section 5 subsection (1), costs shall not be imposed for the tasks performed by the Local Court and the Central Authority in receiving and forwarding applications.

Section 43 **Legal aid and advice**

Notwithstanding Article 26 paragraph 2 of the Hague Child Abduction Convention, there shall be exemption from court costs and extra-judicial costs in proceedings pursuant to this Convention only in accordance with the provisions on legal advice and on legal aid.

Division 7 **Enforcement**

Section 44 **Coercive measures; enforcement *proprio motu***

(1) On infringement of a title to be enforced in Germany pursuant to Chapter III of Regulation (EC) No. 2201/2003, to the Hague Child Protection Convention, to the Hague Child Abduction Convention or to the European Custody Convention, such title being aimed at the delivery of persons or the regulation of access, the court should impose a coercive fine, and in the event of such fine not being recoverable, the court should order coercive detention. Where the imposition of a coercive fine offers no prospect of success, the court should order coercive detention.

(2) In respect of titles referred to in subsection (1), jurisdiction shall lie with the Higher Regional Court, so far as the order has been declared enforceable, made or confirmed by that court.

(3) Where a child is to be delivered or returned, the court shall carry out enforcement *proprio motu*, unless the order is aimed at delivery of the child for the purpose of having access. Upon application by the obligee, the court should dispense with this.

Division 8
Cross-border placement

Section 45
Competence for consent to placement

For the grant of consent to placement of a child pursuant to Article 56 of Regulation (EC) No. 2201/2003 or to Article 33 of the Hague Child Protection Convention in Germany, competence shall lie with the supra-local agency responsible for the public youth welfare service in the area where, as proposed by the requesting agency, the child is to be placed, or otherwise with the supra-local agency with whose area the Central Authority has found the closest link. Alternatively, competence shall lie with the *Land* of Berlin.

Section 46
Consultation procedure

(1) Consent to the request should as a rule be granted where

1. carrying out the intended placement in Germany is in the best interests of the child, in particular because he or she has a particular connection with the country,
2. the foreign agency has submitted a report and, to the extent necessary, medical certificates or reports setting out the reasons for the intended placement,
3. the child has been heard in the proceedings abroad, unless this appeared inappropriate on the ground of the child's age or degree of maturity,
4. the consent of the appropriate institution or foster family has been given and there are no reasons telling against such placement,
5. any approval required by the law governing aliens has been given or promised,
6. the issue of assumption of costs has been dealt with.

(2) In the case of a placement linked with deprivation of liberty the request shall be refused notwithstanding the conditions set out in subsection (1) where

1. in the requesting State, no court decides on the placement, or
2. on the basis of the notified facts of the case, a placement linked with deprivation of liberty would not be admissible under national law.

(3) The foreign agency can be requested to provide supplementary information.

(4) Where there is a request for placement of a foreign child, the opinion of the aliens authority shall be obtained.

(5) The decision, for which reasons shall be stated, shall also be notified to the Central Authority and to the institution or foster family where the child is to be placed. The decision shall be incontestable.

Section 47
Approval of the Family Court

(1) The consent of the supra-local agency responsible for the public youth welfare service, pursuant to sections 45 and 46, shall be admissible only with the approval of the Family Court. The court should as a rule give its approval where

1. the conditions referred to in section 46 subsection (1), number 1 to 3, are met, and
2. there is no apparent impediment to recognition of the intended placement.

Section 46 subsections (2) and (3) shall apply *mutatis mutandis*.

- (2) Local jurisdiction shall lie with the Family Court at the seat of the Higher Regional Court in whose area of jurisdiction the child is to be placed for the district of that Higher Regional Court. Section 12 subsections (2) and (3) shall apply *mutatis mutandis*.
(3) The order, for which reasons shall be stated, shall be incontestable.

Division 9

Certificates concerning national decisions pursuant to Regulation (EC) No. 2201/2003

Section 48

Issuance of certificates

- (1) The certificate pursuant to Article 39 of Regulation (EC) No. 2201/2003 shall be issued by the registry clerk at the registry of the court of first instance and, where the proceedings are pending before a higher court, by the registry clerk at the registry of such court.
(2) The certificate pursuant to Articles 41 and 42 of Regulation (EC) No. 2201/2003 shall be issued by the Family Court judge at the court of first instance, in proceedings before the Higher Regional Court or the Federal Court of Justice by the President of the Panel for Family Matters.

Section 49

Rectification of certificates

Section 319 of the Civil Procedure Code shall apply *mutatis mutandis* to the rectification of a certificate pursuant to Article 43 paragraph 1 of Regulation (EC) No. 2201/2003.

Division 10

Costs

Section 50 to 53 (repealed)

Section 54

Translations

The amount of remuneration for the translations arranged by the Central Authority shall be governed by the Judicial Remuneration and Compensation Act.

Division 11

Transitional provisions

Section 55

Transitional provisions for Regulation (EC) No. 2201/2003

This Act shall also apply *mutatis mutandis* to proceedings pursuant to Council Regulation (EC) No. 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses (OJ EU No. L 160 p. 19), subject to the following condition:

Where an order is to be served on the obligor pursuant to section 21 in a State that is neither a Member State of the European Union nor a contracting party to the Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters (Federal Law Gazette [*Bundesgesetzblatt*] 1994 part II p. 2658) and where the Family Court has set a time limit for a complaint, pursuant to section 10 subsection (2) and section 50 subsection (2), fourth and fifth sentence, of the Recognition and Implementation of Enforcement Act, the complaint by the obligor against the admission of compulsory enforcement shall be filed within the time limit set by the court.

Section 56

Transitional provisions for the Custody Conventions Implementation Act

The provisions of the Custody Conventions Implementation Act of 5 April 1990 (Federal Law Gazette [*Bundesgesetzblatt*] part I p. 701), as last amended by Article 2 paragraph 6 of the Act of 19 February 2001 (Federal Law Gazette [*Bundesgesetzblatt*] part I p. 288, 436), shall

continue to apply to proceedings, pursuant to the Hague Child Abduction Convention and to the European Custody Convention, that were commenced before this Act entered into force. In respect of compulsory enforcement, however, the provisions of this Act shall be applied. Where a court has already commenced compulsory enforcement, its functional jurisdiction shall remain unaffected.