

# **The Federal Lawyers' Act (Bundesrechtsanwaltsordnung- BRAO)**

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<sup>1</sup> The *Rechtsanwaltsgesellschaft* is similar to a LLC

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## Chapter One The Rechtsanwalt

BRAO § 1 The status of a Rechtsanwalt in the administration of justice

A Rechtsanwalt is an independent agent in the administration of justice.

BRAO § 2 The profession of Rechtsanwalt

- (1) A Rechtsanwalt practises a liberal profession.
- (2) The work of a Rechtsanwalt is not a trade.

BRAO § 3 The right to provide legal advice and right of representation

- (1) A Rechtsanwalt is an appointed and independent advisor and representative in all legal matters.
- (2) A Rechtsanwalt's right to appear before courts, arbitral tribunals or authorities of any kind may only be restricted by an Act of the Federal Parliament.
- (3) Within the framework of the law everyone has the right to be given legal advice and represented by a Rechtsanwalt of his or her choice in the courts, before arbitral tribunals or before the authorities.

## Chapter Two The admission of a Rechtsanwalt

### Part One Admission as a Rechtsanwalt

#### 1. General preconditions

BRAO § 4 Admission to the legal profession

Only a person who is qualified to sit as a judge under the German Judge Act (*Deutsches Richtergesetz*) or who has met the conditions for admission to the profession under the Act concerning the Work of European Lawyers in Germany (*Gesetz über die Tätigkeit europäischer Rechtsanwälte in Deutschland*) of 9 March 2000 (Federal Gazette I p. 182) or who has passed the aptitude test under this Act may be admitted to the legal profession.

BRAO § 5 Freedom of movement

A person who has qualified to sit as a judge (§ 4) in one of the German *Länder* may also apply to be admitted to the legal profession in any other German *Land*.

#### 2. The granting, expiry, withdrawal and revocation of admission to the legal profession

BRAO § 6 Application for admission to the legal profession

- (1) Admission to the legal profession shall be granted on application.
- (2) An application may only be rejected for the reasons set out in this Act.

BRAO § 7 Rejection of an application for admission to the legal profession

An application for admission to the legal profession shall be rejected,

1. if the applicant has forfeited a basic right by virtue of a decision of the Federal Constitutional Court (*Bundesverfassungsgericht*);
2. if the applicant does not have the right to take public office on grounds of a criminal conviction;
3. if the applicant has been excluded from the legal profession by virtue of a final judgment and less than eight years have elapsed since such a judgment became final; this shall have no bearing on number 5;

4. if a final judicial decision has been taken against the applicant in impeachment proceedings against a judge or in disciplinary proceedings for removal from an office in the administration of justice;
5. if the applicant is guilty of behaviour which makes him/her appear unworthy to practise as a Rechtsanwalt;
6. if the applicant opposes the Free, Democratic Basic Order in a way that is punishable by law;
7. if the applicant, for reasons of health, is incapable of properly practising as a Rechtsanwalt for more than merely a temporary period;
8. if the applicant engages in an occupation which is inconsistent with the profession of a Rechtsanwalt, particularly his/her status as an independent agent in the administration of justice, or which is likely to undermine confidence in the Rechtsanwalt's independence;
9. if the applicant's finances are in a state of deterioration; this shall be suspected to be the case if insolvency proceedings have been instituted against the applicant or if the applicant is entered in the register to be kept by the Insolvency Court or the Enforcement Court (§ 26 para. 2 of the Insolvency Code [*Insolvenzordnung*]), § 915 of the Code of Civil Procedure [*Zivilprozeßordnung*]);
10. if the applicant is a judge, a civil servant, a regular soldier or a soldier in short-term service unless the applicant is performing his/her tasks in an honorary capacity or unless the applicant's rights and duties derive from §§ 5, 6, 8 and 36 of the Members of Parliament Act (*Abgeordnetengesetz*) of 18 February 1977 (Federal Gazette I p. 297) or from equivalent legislation.

#### BRAO § 8 Decision concerning the application

- (1) The decision concerning an application for admission to the legal profession shall be taken by the Regional Judicial Administration (*Landesjustizverwaltung*).
- (2) Before the decision is taken, the Regional Judicial Administration shall seek a report from the Council of the Bar (*Rechtsanwaltskammer*) in whose district the applicant seeks to be admitted (§ 18). The report should also contain comments on all reasons for refusing admission that may concern the personal qualities of the applicant.
- (3) The Council of the Bar should submit the report immediately. If it cannot submit the report within two months it must notify the Regional Judicial Administration in good time of the reasons for the delay.
- (4) The Regional Judicial Administration may assume that the Council of the Bar does not have any grounds for refusing admission if it has neither submitted the report within two months nor given any reasons for the delay.

#### BRAO § 8a Medical report in the admission procedure

- (1) Should it be necessary in order to reach a decision regarding the reason for refusing admission set out in § 7 para. 7, the Regional Judicial Administration shall order the applicant to submit a report concerning the applicant's state of health within a reasonable period of time to be set by the Regional Judicial Administration. The report shall be made by a medical practitioner chosen by the Regional Judicial Administration. The report must be based on a medical examination and, if the public health officer considers this to be necessary, also on a clinical observation of the applicant. The costs of the medical report shall be borne by the applicant.
- (2) Reasons shall be given for any orders made under para. 1 and these shall be served on the applicant. The applicant may petition the Higher Lawyers' Court (*Anwaltsgerichtshof*) within one month of these reasons having been served. The court that shall have jurisdiction shall be the Higher Lawyers' Court at the Higher Regional Court (*Oberlandesgericht*) in whose district the applicant seeks to be admitted.
- (3) If the applicant fails to comply with the order from the Regional Judicial Administration without having adequate grounds, the application for admission to the legal profession shall be deemed withdrawn.

#### BRAO § 9 Unfavourable report from the Bar in certain cases

- (1) If the Council of the Bar makes a report indicating that there are grounds for refusing the applicant admission to the legal profession, as stated in numbers 5 to 9 of § 7, the Regional Judicial

Administration shall stay the decision regarding the application for admission to the legal profession and send the applicant a certified copy of the report. The Regional Judicial Administration, however, may take a decision, if the application is to be rejected anyway for a reason which is not stated in sentence 1.

- (2) The applicant may make petition the Higher Lawyers' Court within one month of the report being served. The court that shall have jurisdiction shall be the Higher Lawyers' Court at the Higher Regional Court in whose district the applicant seeks to be admitted to the legal profession.
- (3) If the applicant does not petition the court, the applicant's application for admission to the legal profession shall be deemed withdrawn.
- (4) If the court, in response to a petition in accordance with para. 2, finally decides that the reason for refusing admission given by the Council of the Bar is not a valid one, the Regional Judicial Administration shall take a decision regarding the application for admission to the legal profession, paying due regard to the legal opinion held by the court. If the court finds that the reason for refusing admission given by the Council of the Bar is a valid one, the application for admission for admission to the legal profession shall be deemed rejected as soon as the court decision has become final.

#### BRAO § 10 Stay of the admission procedure

- (1) The decision concerning an application for admission to the legal profession may be stayed if criminal investigations are being carried out or if a criminal trial is pending on grounds of a suspicion that the applicant may have committed a criminal offence.
- (2) The decision regarding the application shall be stayed if the applicant has been publicly accused of a criminal offence which may result in the applicant being found unfit to take public office.
- (3) However a decision shall be taken regarding the application for admission to the legal profession if it is already to be rejected irrespective of the outcome of the criminal investigation proceedings or the outcome of the criminal trial.

#### BRAO § 11 Application against a rejection by the Regional Judicial Administration

- (1) The notice in which the Regional Judicial Administration refuses the applicant admission to the legal profession must state the reasons. It shall be served on the applicant.
- (2) The applicant may petition the Higher Lawyers' Court to quash the rejection within one month of the notice being served. The court that shall have jurisdiction is the Higher Lawyers' Court at the Higher Regional Court in whose district the applicant first seeks admission to the legal profession.
- (3) If the Regional Judicial Administration has not taken a decision regarding an application for admission to the legal profession within three months, without having adequate grounds, the applicant may file a petition for a court decision.

#### BRAO § 12 Certificate of admission

- (1) The applicant shall receive a certificate of admission to the legal profession to be issued by the Regional Judicial Administration.
- (2) The applicant shall be validly admitted to the legal profession on the issue of the certificate. The certificate may not be issued until evidence of professional indemnity insurance has been provided (§ 51) or a provisional cover note has been issued.
- (3) After being admitted to the legal profession the applicant shall have the right to bear the professional title of "Rechtsanwalt".

#### BRAO § 13 Expiry of admission to the legal profession

Admission to the legal profession shall expire if it has been decided through a final court judgment that the person concerned is to be excluded from the legal profession.

#### BRAO § 14 Withdrawal and revocation of admission to the legal profession

- (1) Admission to the legal profession shall be withdrawn with effect for the future if facts subsequently become known which mean that admission would have had to be refused had such facts been known at the time.
- (2) Admission to the legal profession shall be revoked,
  1. if a Rechtsanwalt has forfeited a fundamental right by virtue of a decision of the Federal Constitutional Court;
  2. if a Rechtsanwalt has become unfit to take public office on grounds of a criminal conviction;
  3. if a Rechtsanwalt, for reasons of health, is incapable of properly practising the profession of Rechtsanwalt for longer than merely a temporary period unless it does not unduly obstruct the administration of justice for the Rechtsanwalt to remain in the legal profession;
  4. if a Rechtsanwalt has renounced the rights conferred through his/her admission to the legal profession in a written notice sent to the Regional Judicial Administration;
  5. if a Rechtsanwalt has been appointed as a judge or a lifelong civil servant, has been enlisted to serve as a regular soldier or has been reinstated in his/her former appointment as a judge or lifelong civil servant or as a regular soldier under § 6 of the Members of Parliament Act (*Abgeordnetengesetz*) or under equivalent legislation and the Rechtsanwalt does not renounce the rights conferred through his/her admission to the legal profession;
  6. if a Rechtsanwalt's admission before a court is revoked under § 35 para. 1;
  7. if a Rechtsanwalt's finances have fallen into a state of deterioration, unless this does not put the interests of the client at risk; a state of financial deterioration shall be assumed if insolvency proceedings have been instituted against the Rechtsanwalt or the Rechtsanwalt has been entered in the register to be kept by the Insolvency Court or the Enforcement Court (§ 26 para. 2 of the Insolvency Code, § 915 of the Code of Civil Procedure);
  8. if a Rechtsanwalt engages in an occupation which is inconsistent with the Rechtsanwalt's profession, in particular with the Rechtsanwalt's status as an independent agent in the administration of justice, or which may undermine confidence in the Rechtsanwalt's independence; this shall not be the case if the revocation would be an unreasonably harsh measure for the person in question;
  9. if a Rechtsanwalt does not maintain the mandatory professional indemnity insurance (§ 51).
- (3) After hearing the opinion of the Council of the Bar a dispensation may be granted so that admission to the legal profession is not revoked if the reasons for refusing admission no longer exist.

#### BRAO § 15 Medical report in the revocation proceedings

§ 8a para.s 1 and 2 and § 16 para. 6 shall apply accordingly in the proceedings regarding revocation of admission to the legal profession in accordance with § 14 para. 2 no. 3. If the medical report is not submitted within the period of time set by the Regional Judicial Administration, without there being adequate reasons, it shall be assumed that the Rechtsanwalt is unfit to properly practise his/her profession for longer than merely a temporary period for a reason set out in § 14 para. 2 no. 3 to be clarified by the report.

#### BRAO § 16 Procedure in the case of withdrawal or revocation of admission to the legal profession

- (1) The withdrawal or revocation of admission to the legal profession shall be ordered by the Regional Judicial Administration in the *Land* in which the Rechtsanwalt is admitted.
- (2) The Rechtsanwalt must be given a hearing and the opinion of the Council of the Bar must be sought before admission to the legal profession is withdrawn or revoked.
- (3) If the Rechtsanwalt, for reasons of health, is not in a position to defend his/her rights in the proceedings, the local court (*Amtsgericht*), on the petition of the Regional Judicial Administration, shall appoint a legal representative in respect of the proceedings; the provisions of the Act concerning Matters of Voluntary Jurisdiction for Proceedings when Ordering a Legal Representative or a Legal Guardian (*Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit für das Verfahren bei Anordnung einer Betreuung*) in accordance with sections

1896 to 1908i of the German Civil Code shall apply accordingly. The person appointed as legal representative should be a Rechtsanwalt.

- (4) The order withdrawing or revoking admission to the legal profession must state the reasons. It shall be served on the Rechtsanwalt and notified to the Council of the Bar.
- (5) The Rechtsanwalt may petition the Higher Lawyers' Court for a decision quashing the withdrawal or revocation of admission to the legal profession within one month of the order being served. The court that shall have jurisdiction shall be the Higher Lawyers' Court at the Higher Regional Court in whose district the Rechtsanwalt is admitted.
- (6) The petition to the court shall have suspensive effect. It shall lapse if the Regional Judicial Administration expressly decrees the immediate execution of its order on grounds of an overriding public interest. Such an instruction must generally be given in the case set out in § 14 para. 2 no. 9. The particular interest in the immediate execution of the order must be substantiated in writing. On the Rechtsanwalt's petition, the Higher Lawyers' Court, in urgent cases, may reinstate the suspensive effect without an oral hearing. The decision may not be challenged; it may be overruled at any time by the Higher Lawyers' Court.
- (7) If immediate execution is decreed, § 155 para.s 2, 4 and 5, § 156 para. 2, § 160 para. 2 and § 161 shall apply accordingly.

#### BRAO § 17 Expiry of the right to bear the professional title

- (1) On the expiry, withdrawal or revocation of admission to the legal profession the person in question shall forfeit the right to bear the title of "Rechtsanwalt". The title may not even be borne with an additional piece of information drawing attention to the person's former right.
- (2) If a Rechtsanwalt renounces his/her admission to the legal profession on grounds of old age or physical infirmities, the Regional Judicial Administration may grant such a person permission to continue to use the title of "Rechtsanwalt". In doing so the Regional Judicial Administration must first consult the Council of the Bar.
- (3) The Regional Judicial Administration may revoke any permission which it has granted in accordance with para. 2 if circumstances occur at a later date which would lead to the expiry, withdrawal or revocation of admission to the legal profession. Before revoking such permission the Regional Judicial Administration must give the former Rechtsanwalt a hearing and seek the opinion of the Council of the Bar.

#### Part two – Admission before a court

##### BRAO § 18 Localisation

- (1) Every Rechtsanwalt must be admitted before a certain court of ordinary jurisdiction.
- (2) Admission before a court shall first be granted concurrently with admission to the legal profession.
- (3) The Rechtsanwalt may only renounce the rights conferred by admission before a court in order to be admitted before another court.

##### BRAO § 19 Application for admission before a court

- (1) Admission before a court shall be granted on application.
- (2) The decision regarding the application shall be taken by the Regional Judicial Administration. Before the decision is taken, the Regional Judicial Administration shall seek the opinion of the Council of the Bar in whose district the applicant is seeking admission to the legal profession.
- (3) An application may only be rejected on the grounds set out in this Act.

##### BRAO § 20 Rejection of an application for admission

- (1) Admission before the court indicated in the application shall generally be refused,
  1. if the applicant has served as a judge or as a lifelong civil servant within the last five years in the district of the Regional Court (*Landgericht*) in which the applicant is seeking admission;

2. if the applicant is seeking admission before a Higher Regional Court without having practised as a Rechtsanwalt for five years before a Regional Court or a Local Court.
- (2) Admission may not be refused on the ground that there is no need for further Rechtsanwälte to be admitted before the court indicated in the application.

#### BRAO § 21 Petition to a court

- (1) The notice refusing admission before a court must state the reasons. It must be served on the applicant.
- (2) The applicant may file a petition for a court decision quashing such a notice refusing admission by petitioning the Higher Lawyers' Court within one month of the notice being served. The court that shall have jurisdiction shall be the Higher Lawyers' Court at the Higher Regional Court in whose district the applicant seeks admission as a Rechtsanwalt
- (3) § 11 para. 3 shall apply accordingly.

#### BRAO § 22 (repealed)

#### BRAO § 23 Concurrent admission before a Local Court and a Regional Court

A Rechtsanwalt who is admitted before a Local Court shall, on application, also be admitted before the Regional Court in whose district the Local Court has its seat.

#### BRAO § 24 (repealed)

#### BRAO § 25 Exclusivity of admission before the Higher Regional Court

A Rechtsanwalt who is admitted before a Higher Regional Court may not be concurrently admitted before another court.

#### BRAO § 26 Oath to be taken on admission to the legal profession

- (1) Immediately after a Rechtsanwalt has first been admitted to the legal profession, the Rechtsanwalt must take the following oath in a public session of the court where the Rechtsanwalt is admitted: "I swear by God, the Almighty and Omniscient to honour the Constitution and to conscientiously perform the duties of a Rechtsanwalt, so help me God."
- (2) The oath may also be taken without any religious affirmation.
- (3) When the oath is taken, the person taking the oath should raise his/her right hand.
- (4) If there is any law permitting the members of a religious community to use other forms of affirmation in lieu of an oath, a Rechtsanwalt who is a member of such a religious community may pronounce such an affirmation.
- (5) Minutes shall be taken of the taking of the oath and they shall also record the words which are spoken. The minutes must be signed by the Rechtsanwalt and by the presiding judge of the court. They must be kept with the Rechtsanwalt's personal files.

#### BRAO § 27 The law practice

- (1) A Rechtsanwalt must establish a law practice in the locality of the court where the Rechtsanwalt is admitted. If the Rechtsanwalt is also admitted before a number of courts which sit in different localities, the Rechtsanwalt must establish his/her law practice in the locality where he/she was first admitted. The Regional Judicial Administration may determine that neighbouring localities shall be regarded as a single locality for the purposes of this provision.
- (2) A Rechtsanwalt who is admitted before a Local Court may establish his/her law practice in another locality under the court's jurisdiction instead of establishing the law practice in the same locality as the court.

#### BRAO § 28 Branch office and consulting days



- (1) A Rechtsanwalt may neither establish a branch office nor hold consulting days outside the law practice. However, the Regional Judicial Administration may grant permission for this to be done if it seems to be in the pressing interests of the proper administration of justice in the circumstances which prevail in the locality. The opinion of the Council of the Bar must first be sought.
- (2) Such permission may be revoked. Before such permission is revoked, the Rechtsanwalt must be given a hearing and the opinion of the Council of the Bar must be sought.
- (3) The notice refusing or revoking such permission must state the reasons. It must be served on the Rechtsanwalt. The Rechtsanwalt may file a petition for a court decision quashing such a notice by petitioning the Higher Lawyers' Court within one month of the notice being served. The court which shall have jurisdiction shall be the Higher Lawyers' Court at the Higher Regional Court in whose district the Rechtsanwalt is admitted.

#### BRAO § 29 Exceptions from the duty to establish a law practice

- (1) In the interests of the administration of justice or to avoid hardship, the Regional Judicial Administration may grant a Rechtsanwalt dispensation from the duty set out in § 27. The opinion of the Council of the Bar must first be sought.
- (2) Such dispensation may be revoked if this should be necessary in the interests of the proper administration of justice. Before the dispensation is revoked, the Rechtsanwalt must be given a hearing and the opinion of the Council of the Bar must be sought.
- (3) A notice rejecting an application for dispensation or merely granting dispensation subject to certain conditions or revoking dispensation must state the reasons. It must be served on the Rechtsanwalt. The Rechtsanwalt may file a petition for a court decision quashing such a notice by petitioning the Higher Lawyers' Court within one month of the notice having been served. The court that shall have jurisdiction shall be the Higher Lawyers' Court at the Higher Regional Court in whose district the Rechtsanwalt is admitted.
- (4) § 11 para. 3 shall apply accordingly.

#### BRAO § 29a Law practices in other countries

- (1) The provisions of this Part shall not prevent a Rechtsanwalt from establishing or maintaining a law practice in other countries.
- (2) The Regional Judicial Administration shall grant a Rechtsanwalt who has established a law practice only in other countries dispensation from the duty set out in § 27 in as far as this is not inconsistent with the overriding interests of the administration of justice.
- (3) The Rechtsanwalt must notify the Regional Judicial Administration and the Bar of the address of his/her law practice and of his/her place of residence in another country and also of any change of address. § 29 para. 1 sentence 2, para.s 2 and 3 and § 11 para. 3 shall apply accordingly.

#### BRAO § 30 Person authorised to accept the service of notices

- (1) If a Rechtsanwalt has been granted dispensation from the duty to maintain a law practice, the Rechtsanwalt must appoint a person who is permanently authorised to accept the service of notices in the locality of the court where the Rechtsanwalt is admitted. This person must be a permanent resident in this place; if the Rechtsanwalt is at the same time admitted before a number of courts in several localities, the Rechtsanwalt must appoint the person authorised to accept the service of notices in the locality where the law practice would have had to be established (§ 27 para. 1 sentence 2).
- (2) Service to the person authorised to accept the service of notices may also be made from Rechtsanwalt to Rechtsanwalt (§§ 174, 195 of the Code of Civil Procedure) and also to the Rechtsanwalt himself/herself.
- (3) If nobody has been appointed to accept the service of notices, contrary to para. 1, service may be effected through posting (§ 184 of the Code of Civil Procedure). The same applies if it is not possible to effect service to the authorised person in the locality where the court has jurisdiction.

#### BRAO § 31 Entry in the List of Rechtsanwälte

- (1) Each court of ordinary jurisdiction shall keep a List of the Rechtsanwälte who are admitted before this court.
- (2) A Rechtsanwalt shall be entered in the list after taking the oath (§ 26), giving notice of his/her place of residence and establishing a law practice (§ 27). If a Rechtsanwalt has been granted dispensation from the duty in § 27, the Rechtsanwalt shall be entered in the list as soon as he/she has taken the oath.
- (3) The list must indicate the date when the Rechtsanwalt was admitted and the date when the Rechtsanwalt took the oath, the Rechtsanwalt's place of residence and law practice and whether or not the Rechtsanwalt has permission to hold consulting days outside the law practice or to establish a branch office. In the cases set out in § 29 para. 1 or in § 29a para. 2 the nature of the dispensation shall be noted.
- (4) The Rechtsanwalt shall be given a certificate regarding his/her entry in the list.
- (5) If the Rechtsanwalt moves his/her place of residence or his/her law practice, the Rechtsanwalt must immediately notify the Regional Judicial Administration and the court where the Rechtsanwalt is admitted so that the information can be entered in the list.

#### BRAO § 32 Starting to practise as a Rechtsanwalt

- (1) After being entered in the List of Rechtsanwälte, the Rechtsanwalt shall then have the right to practise as a Rechtsanwalt.
- (2) This shall not affect the legal validity of acts which the Rechtsanwalt has performed prior to this.

#### BRAO § 33 Admission before a different court

- (1) On application a Rechtsanwalt may be admitted before another court of ordinary jurisdiction if he/she has renounced the rights conferred by his/her former admission. The statement renouncing these rights must be made in writing and submitted to the Regional Judicial Administration which has granted admission.
- (2) The decision regarding the application for admission in a different locality may be stayed if proceedings are pending against the Rechtsanwalt before the Lawyers' Disciplinary Court or if criminal investigations are being conducted against the Rechtsanwalt on the ground that the Rechtsanwalt may have committed a criminal offence or if criminal proceedings are pending against this person.
- (3) The application may not be refused on the ground that the Rechtsanwalt has been admitted to the legal profession in another *Land*.
- (4) The previous rights of admission (§ 18 para. 1) shall be not be revoked by the Regional Judicial Administration that granted them until the Rechtsanwalt has been admitted before another court.

#### BRAO § 33a Change in admission on the reallocation of courts

If there is any change in the allocation of the courts, the Rechtsanwalt shall be admitted before the court of ordinary jurisdiction in the locality where the Rechtsanwalt has his/her law practice in lieu of the court where the Rechtsanwalt was admitted before the change.

#### BRAO § 34 Expiry of admission

Admission before a court shall expire

1. if a Rechtsanwalt's admission to the legal profession has expired (§ 13);
2. if a Rechtsanwalt's admission to the legal profession has been withdrawn or revoked (§§ 14 to 16);
3. if a Rechtsanwalt is admitted before a different court due to a change in the allocation of the courts (§ 33a).

#### BRAO § 35 Revocation of admission before a court

- (1) Admission before a court may be revoked,
  1. if a Rechtsanwalt does not take the oath in accordance with § 26 within three months after first being admitted before a court;

2. if a Rechtsanwalt does not comply with the duty to establish a law practice in the locality in accordance with § 27 within three months of being admitted before a court;
3. if a Rechtsanwalt does not comply with a condition that has been imposed on him/her in order to obtain a dispensation in accordance with § 29 para. 1 or § 29a para. 2;
4. if a Rechtsanwalt does not appoint a person who is authorised to accept the service of notices within three months of being granted dispensation from the duty to maintain a law practice (§ 29 para. 1, § 29a para. 2) or the person previously authorised to accept service is no longer available;
5. if a Rechtsanwalt abandons his/her law practice without being granted dispensation from the duty set out in § 27.
6. (repealed)
- (2) Admission shall be revoked by the Regional Judicial Administration. Before such revocation, the Rechtsanwalt must be given a hearing and the opinion of the Council of the Bar must be sought. Reasons must be given for the order revoking admission. It must be served on the Rechtsanwalt and notified to the Council of the Bar. The Rechtsanwalt may appeal against the revocation within one month of the order being served by petitioning the Higher Lawyers' Court. The court that shall have jurisdiction shall be the Higher Lawyers' Court at the Higher Regional Court in whose district the Rechtsanwalt is admitted. § 16 para. 6 shall apply accordingly.

#### BRAO § 36 Deletion from the List of Rechtsanwälte

- (1) Except in the case of death, a Rechtsanwalt shall be deleted from the List of Rechtsanwälte who are admitted to the legal profession (§ 31),
  1. if the Rechtsanwalt's admission before a court has expired (§ 34);
  2. if the Rechtsanwalt's admission before a court has been revoked (§ 33 para. 4, § 35).
- (2) Legal acts which the Rechtsanwalt performed prior to being deleted from the list shall not be invalid on the ground that the Rechtsanwalt was no longer licensed to practise as a Rechtsanwalt or to appear before a court at the time that the act was performed. The same applies to legal acts which were performed vis-à-vis the Rechtsanwalt before the Rechtsanwalt was deleted from the list.

### Part three - General rules for the administration procedure

#### BRAO § 36a Investigation principle, duty to co-operate, transfer of personal information

- (1) The Regional Judicial Administration shall investigate the facts ex officio. It shall use the evidence that it considers necessary in exercise of its discretion and in due assessment of the circumstances.
- (2) The applicant or Rechtsanwalt involved in the proceedings must co-operate in investigating the facts and give his/her consent to the use of evidence, in as far as such consent is required. The Rechtsanwalt's application for the granting of legal benefits shall be rejected if the Regional Judicial Administration is unable to sufficiently clarify the matter as a consequence of the Rechtsanwalt's refusal to co-operate. The applicant or Rechtsanwalt must be made aware of this legal consequence.
- (3) Courts and authorities shall provide the body responsible for the decision with personal information which, in the view of the body providing the information, is needed for admission to the legal profession and admission before a court, for the withdrawal or revocation of any permission, dispensation or right admission to the legal profession or in order to institute reprimand proceedings or proceedings before a Lawyers' Disciplinary Court, in as far as this does not harm the legitimate interests of the person concerned or if the public interest overrides the interests that an individual has in confidentiality. No information shall be provided if this contravenes particular laws concerning the use of such information.

### Part Four Proceedings in the case of a petition to a court in matters concerning admission

#### BRAO § 37 Form of the petitions

The petition to the court must be submitted in writing to the Higher Lawyers' Court.

#### BRAO § 38 Petition in the case of a refusal from the Bar

- (1) The petition to the court in the case of a refusal from the Council of the Bar (§ 9) must be made against the Bar.
- (2) The applicant must indicate the refusal that he/she is objecting to. The petition must be made in the form of a request for the court to find that the reason for the refusal given by the Council of the Bar is not a valid one. The facts and evidence substantiating the petition must be stated in detail.
- (3) The Regional Judicial Administration may also be party to the proceedings.

#### BRAO § 39 Petition in the case of notices and orders from the Regional Judicial Administration

- (1) The petition for a court decision against a notice or an order from the Regional Judicial Administration must be made against the Regional Judicial Administration. The same applies to petitions to a court on the ground that the Regional Judicial Administration has not issued a notice within three months.
- (2) The applicant must indicate the notice or the order that he/she is objecting to. Furthermore the applicant must state to what extent the notice or the order that is being challenged is to be overruled and what official act the Regional Judicial Administration must be obliged to take. If the petition to a court relies on the fact that the Regional Judicial Administration has not issued a notice within three months, it must be stated which official act is being applied for. The facts and evidence substantiating the petition must be listed in detail.
- (3) In as far as the Regional Judicial Administration has powers to take a decision in the exercise of its discretion, the petition may only rely on the fact that the statutory limits of such discretion have been exceeded (that it is *ultra vires*) or that the authority has exercised its discretion in a way that does not serve the purpose for which such powers were conferred.

#### BRAO § 40 Proceedings before the Higher Lawyers' Court

- (1) The Higher Lawyers' Court must notify the respondent of the petition requesting a statement to be made within a certain period of time to be set by the presiding judge. Even if the Bar is not the respondent, it must be notified of the petition and at the same time given an opportunity to make its view felt; the Bar must be notified of the date that has been set for the oral hearing. The Higher Lawyers' Court must also notify the Regional Judicial Administration of any petition against a refusal from the Council of the Bar.
- (2) The Higher Lawyers' Court shall take a decision concerning the petition on the basis of an oral hearing. However there shall be no need for an oral hearing if the parties expressly waive such a hearing.
- (3) The oral hearing shall be held in camera. Representatives of the Regional Judicial Administration, the presiding judge of the Higher Regional Court or his/her deputy, the civil servants of the Public Prosecutor's office at the Higher Regional Court and members or representatives of the Council of the Bar shall be admitted to the hearing. After hearing the parties involved, the Higher Lawyers' Court may also allow other persons to be admitted to the hearing as observers. At the petitioner's request the hearing must be held in public and on the petition of another party involved the hearing may be held in public; in this case the rules of the Court Constitution Act (*Gerichtsverfassungsgesetz*) concerning public hearings shall apply *mutatis mutandis*.
- (4) The hearing shall also be subject to the provisions of the Act concerning Matters of Voluntary Jurisdiction (*Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit*) which shall apply accordingly.

#### BRAO § 41 Decision of the Higher Lawyers' Court

- (1) The Higher Lawyers' Court shall take a decision regarding the petition by making a ruling for which reasons must be given. A majority of two thirds of the votes shall be required for a decision which is to the applicant's detriment.

- (2) If the Higher Lawyers' Court considers a petition against a refusal from the Council of the Bar (§ 38) to be justified, it shall find that the reason for the refusal proffered by the Council of the Bar is not a valid one. If the court dismisses the petition as being unjustified, it shall at the same time find that the reason for the refusal proffered by the Council of the Bar is a valid one.
- (3) If the Higher Lawyers' Court considers a petition challenging a notice or an order from the Regional Judicial Administration (§ 39) to be justified, it shall overrule the notice or the order. If the petition is against a refusal and the matter is ripe for a decision, the Higher Lawyers' Court shall at the same time pronounce that the Regional Judicial Administration has a duty to perform the official act sought in the petition; if the matter is not yet ripe for a decision, the court shall at the same time pronounce that the Regional Judicial Administration has a duty to notify the applicant, taking account of the legal opinion held by the court.
- (4) If the Higher Lawyers' Court considers the applicant to have cause for complaint on the ground that the Regional Judicial Administration has not given the applicant a notice with no adequate reasons, it shall pronounce that the Regional Judicial Administration has a duty to notify the applicant.
- (5) The Higher Lawyers' Court shall serve notice of a ruling regarding a petition in accordance with § 38 to the Regional Judicial Administration, even if it has not been party to the proceedings.

#### BRAO § 42 Right of immediate appeal (Beschwerde)<sup>2</sup>

- (1) The applicant shall have the right to file an immediate appeal against the decision of the Higher Lawyers' Court if the Court has dismissed the applicant's petition for
  1. a finding that the reason for the refusal set out in the report from the Council of the Bar is not a valid one,
  2. admission to the legal profession,
  3. the decision withdrawing or revoking admission to the legal profession to be quashed,
  4. admission before a court or
  5. the decision revoking admission before a court to be quashed.
- (2) The Regional Judicial Administration shall have the right to file an immediate appeal if the Higher Lawyers' Court has quashed a notice or an order from the Regional Judicial Administration in the cases set out in para. 1. Furthermore the Regional Judicial Administration may independently file an immediate appeal if the Higher Lawyers' Court has taken a decision concerning an petition in accordance with § 38, even if the Regional Judicial Administration has not been party to the proceedings in the first instance.
- (3) The Bar shall have the right to file an immediate appeal if the Higher Lawyers' Court, in response to a petition in accordance with § 38, has ruled that the reason for the refusal proffered by the Council of the Bar is not a valid one.
- (4) The immediate appeal must be submitted in writing to the Higher Lawyers' Court within two weeks. It shall have suspensive effect.
- (5) The Federal Supreme Court shall take a decision concerning the immediate appeal. It shall also take a decision concerning petitions for reinstatement of the suspensive effect (§ 16 para. 6, § 35 para. 2).
- (6) § 40 para.s 2 and 3 shall apply accordingly to the proceedings before the Federal Supreme Court. Furthermore the provisions of the Act concerning Matters of Voluntary Jurisdiction (*Gesetz über die Angelegenheitender freiwilligen Gerichtsbarkeit*) shall apply mutatis mutandis.

## Chapter three The rights and duties of Rechtsanwälte and professional collaboration among Rechtsanwälte

### Part one - General

#### BRAO § 43 General professional duties

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<sup>2</sup> Translator's note: The "Beschwerde" is "an appeal to the higher court from the dismissal of a motion (or application concerning a procedural issue" (definition from Dietl/Lorenz)

A Rechtsanwalt must practise his/her profession conscientiously. A Rechtsanwalt must show that he/she is worthy of the respect and the trust that his/her status as Rechtsanwalt demands, both when practising and when not practising his/her profession.

#### BRAO § 43a The basic duties of a Rechtsanwalt

- (1) A Rechtsanwalt may not enter into any ties that pose a threat to his/her professional independence.
- (2) A Rechtsanwalt has a duty to observe professional secrecy. This duty relates to everything that has become known to the Rechtsanwalt in professional practice. This does not apply to facts that are obvious or which do not need to be kept secret from the point of view of their significance.
- (3) A Rechtsanwalt must not behave with lack of objectivity in professional practice. Conduct which lacks objectivity is particularly understood as conduct which involves the conscious dissemination of untruths or making denigrating statements when other parties involved or the course of the proceedings have given no cause for such statements.
- (4) A Rechtsanwalt may not represent conflicting interests.
- (5) A Rechtsanwalt must exercise the requisite care in handling any assets entrusted to him/her. Monies belonging to third parties must be immediately forwarded to the entitled recipient or paid into a fiduciary account.
- (6) A Rechtsanwalt has a duty to engage in continuing professional development.

#### BRAO § 43b Advertising

A Rechtsanwalt is only permitted to advertise his/her services in as far as the advertising in question provides matter-of-fact information concerning the form and the nature of the professional services and as long as it is not aimed at soliciting specific instructions or a specific brief.

#### BRAO § 43c Specialised Lawyers (*Fachanwälte*)

- (1) A Rechtsanwalt who has special expertise and experience in a particular field of law may be granted the right to call himself/herself a "Specialised Lawyer" (*Fachanwalt*) by the Bar to which he/she belongs. The title of "*Fachanwalt*" may be granted for administrative law, fiscal law, employment law and social law. The right may be granted for no more than two fields of law.
- (2) The Council of the Bar shall take the decision concerning a Rechtsanwalt's application to be granted such a title through a notice to be served on the Rechtsanwalt after a committee of the Bar has examined the evidence to be submitted by the Rechtsanwalt concerning the acquisition of particular expertise and experience.
- (3) The Council of the Bar shall form a committee for each field of law and shall appoint its members. At least three Rechtsanwälte shall sit on this committee; they may be members of several committees. §§ 75 and 76 shall apply accordingly. Several regional Bars may form joint committees.
- (4) Permission to use the title of "Specialised Lawyer" (*Fachanwalt*) may be withdrawn with effect for the future by the Council of the Bar if facts subsequently become known that, had they been known at the time, would have meant that permission would not have been granted. Permission may be revoked in the event of failure to undertake a course of continuing professional development prescribed in the code of conduct for the profession.

#### BRAO § 44 Notification declining to accept a case

A Rechtsanwalt who is approached for professional services and who does not wish to accept the case must immediately state that this is so. The Rechtsanwalt must provide compensation for any damage resulting from any negligent delay in making such a statement.

#### BRAO § 45 Ban on professional practice

A Rechtsanwalt may not practise:

1. if he/she has already been concerned with the same legal issue as a judge, an arbitrator, a public prosecutor, a member of the public service, a notary or as the administrator of a notariat;
  2. if the Rechtsanwalt has recorded a deed as a notary or as a notary's deputy or as the administrator of a notariat and its legality or interpretation is in dispute or enforcement proceedings are being carried out on its basis;
  3. if the Rechtsanwalt is to take action against the bearer of the assets the Rechtsanwalt manages in matters in which the Rechtsanwalt has had a prior involvement as an administrator in insolvency, an administrator of a deceased's estate, an executor, a legal representative or guardian or in a similar capacity;
  4. if the Rechtsanwalt was already professionally involved in the same matter outside his/her practice as Rechtsanwalt or outside of another activity in the meaning of § 59a para. 1 sentence 1; this shall not apply if such professional involvement has come to an end.
- (2) A Rechtsanwalt may not:
1. become involved in matters with which he/she was already concerned as a Rechtsanwalt against the bearer of the assets to be managed, as an administrator in insolvency, an administrator of a deceased's estate, an executor, a legal representative or guardian or in a similar capacity;
  2. practise in respect of matters with which he/she was already involved outside his/her profession as Rechtsanwalt or outside of another activity in the meaning of § 59a para. 1 sentence 1.
- (3) The prohibitions set out in para.s 1 and 2 also apply to the Rechtsanwälte and members of other professions who are or were in partnership with or who are or were otherwise associated with the Rechtsanwalt in order to jointly practise their professions, also in as far as one of them was involved as defined in para.s 1 and 2.

#### BRAO § 46 Rechtsanwälte in permanent employment

- (1) A Rechtsanwalt may not represent a client before courts or arbitral tribunals in his/her capacity as Rechtsanwalt if the Rechtsanwalt has a duty to make his/her working time and labour available to this client under a permanent contract of employment or other form of employment.
- (2) A Rechtsanwalt may not become active:
  1. if he/she has already been active in a legal capacity in the same matter as a different type of advisor who gives legal advice under a permanent contract of employment or a similar form of employment;
  2. as a different type of advisor who gives legal advice under a permanent contract of employment or a similar type of employment, if he/she has already been involved with the same matter as a Rechtsanwalt.
- (3) The prohibitions set out in para. 2 also apply to the Rechtsanwälte and members of other professions who are or were in partnership with or who are or were otherwise associated with the Rechtsanwalt in order to jointly practise their professions, also in as far as one of them was involved as defined in para. 2.

#### BRAO § 47 Rechtsanwälte serving in the public sector

- (1) Rechtsanwälte who serve as judges or civil servants, without holding such office for life, who are called to serve as soldiers in short-term service or who temporarily serve as non-civil servants in the public sector may not practise their profession as Rechtsanwalt unless they perform the duties assigned to them in an honorary capacity. However the Regional Judicial Administration may, on an Rechtsanwalt's written application, appoint a deputy or allow the Rechtsanwalt to practise his/her profession himself/herself as long as this is not detrimental to the administration of justice.
- (2) If a Rechtsanwalt has a public office without having been made a civil servant and if he/she may not practise as a Rechtsanwalt himself/herself due to the rules governing the office in question, the Regional Judicial Administration may appoint a deputy on the Rechtsanwalt's application.
- (3) The opinion of the Council of the Bar must be sought before a decision is taken regarding the applications referred to in para. 1 sentence 2 and para. 2.

#### BRAO § 48 The duty to act as counsel in court proceedings

- (1) A Rechtsanwalt must act as representative or counsel for a party in court proceedings,

1. if the Rechtsanwalt has been assigned to the party as counsel providing provisional pro bono services to defend the party's rights under § 121 of the Code of Civil Procedure, § 4a para. 2 of the Insolvency Code, § 11a of the Labour Court Act or under other legislation;
  2. if the Rechtsanwalt has been assigned to the party as counsel under §§ 78b and 78c of the Code of Civil Procedure;
  3. if the Rechtsanwalt has been assigned to the other party as counsel on the opposing side under § 625 of the Code of Civil Procedure.
- (2) A Rechtsanwalt may apply for his/her assignment as counsel to be reversed if there are important grounds for doing so.

#### BRAO § 49 Appointment by the court as counsel for the defence, acting as counsel

- (1) A Rechtsanwalt must take up a party's defence or act as counsel if he/she has been appointed as counsel under the provisions of the Code of Criminal Procedure or the Act concerning Breaches of Administrative Rules (*Gesetz über Ordnungswidrigkeiten*) or under the Act concerning International Legal Aid in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen*) or under the Act concerning the International Criminal Court (*IStGH Gesetz*).
- (2) § 48 para. 2 shall apply accordingly.

#### BRAO § 49a The duty to give legal advice

- (1) A Rechtsanwalt has a duty to give legal advice as provided for under the Law on Legal Advice (*Beratungshilfegesetz*). The Rechtsanwalt may decline to give legal advice in the individual case if there are important grounds for doing so.
- (2) A Rechtsanwalt has a duty to co-operate in services offered by the Bar for giving legal advice to persons with a low income who seek access to justice. The Rechtsanwalt may decline to co-operate in the individual case if there are important grounds for doing so.

#### BRAO § 49b Remuneration

- (1) It is not permissible to agree on or to bill for lower fees and disbursements than those provided for in the Federal Scale of Lawyers' Fees (*Bundesgebührenordnung für Rechtsanwälte*) in as far as nothing to the contrary is set out therein. In the individual case a Rechtsanwalt may give consideration to a client's particular personal circumstances, particularly the client's impecuniousness, by lowering his/her fees or by waiving fees or disbursements after bringing the case to a conclusion.
- (2) Agreements under which remuneration or the amount of fees depend on the outcome of the case or on the success of the Rechtsanwalt's work (no win no fee) or under which the Rechtsanwalt keeps a part of the award made by the court as a fee (quota litis) are not permitted.
- (3) It is not permissible to pay and accept a part of the fees or other benefits for acting as agent in obtaining instructions from clients, whether in relation to a Rechtsanwalt or in relation to third parties of any kind. However it is permissible to pay a reasonable fee for the work of another Rechtsanwalt which goes beyond the scope of § 52 of the Federal Scale of Lawyers' Fees. The fees must take account of the responsibility and potential liability borne by the Rechtsanwälte involved and also of any other circumstances. The agreement of such a fee must not be made a precondition for accepting instructions.  
A number of Rechtsanwälte may collaborate on one case and share the fees amongst themselves in a way which is appropriate to the work, the responsibility borne and their potential liability. Sentences 2 and 3 do not apply to Rechtsanwälte who are only admitted before the Federal Supreme Court and the Higher Regional Court.
- (4) The Rechtsanwalt who has a claim to a fee must observe professional secrecy in the same way as the Rechtsanwalt who accepted the instructions. It is not permissible to assign claims to fees or to delegate the collection of fees to a third party who is not admitted as a Rechtsanwalt unless the claim has become res judicata, an initial attempt at enforcement has proved unsuccessful and the Rechtsanwalt has obtained the client's express written consent.

#### BRAO § 50 The Rechtsanwalt's files



- (1) A Rechtsanwalt must be in a position to give an orderly account of his/her professional work. This must be done by creating files.
- (2) The Rechtsanwalt must keep the files for five years after bringing a case to a conclusion. However this duty shall lapse, even before this period has ended, if the Rechtsanwalt has requested the client to take the files and the client has not met this request within six months of receiving it.
- (3) A Rechtsanwalt may refuse to surrender the files to the client until the Rechtsanwalt's fees and disbursements have been paid. This shall not be the case in as far as it would be unreasonable in the circumstances to withhold the files or individual documents.
- (4) Files in the meaning of para.s 2 and 3 of this provision are only the documents which the Rechtsanwalt has received for or on behalf of the client on grounds of his/her professional practice, but not the correspondence between the Rechtsanwalt and the client nor documents where the client has already received the original or a copy.
- (5) Para. 4 shall apply accordingly in as far as the Rechtsanwalt uses electronic data processing in order to keep files.

#### BRAO § 51 Professional indemnity insurance

- (1) A Rechtsanwalt must take out professional indemnity insurance in order to cover his/her potential liability for financial loss resulting from his/her professional practice. The Rechtsanwalt must maintain the insurance for the duration of his/her admission. The insurance must be taken out with an insurance company that is authorised to conduct business operations in Germany under the General Terms and Conditions of Insurance set out in the Insurance Supervisory Act (*Versicherungsaufsichtsgesetz*). The insurance must also cover financial loss for which the Rechtsanwalt is liable under § 278 or § 831 of the German Civil Code.
- (2) The contract of insurance must afford coverage for each and every breach of duty which could result in legal liability claims being brought against the Rechtsanwalt under private law; it may be agreed that all breaches of duty in connection with one uniform mandate shall be regarded as a single case of loss, whether this is due to the conduct of the Rechtsanwalt or of a vicarious agent assisting the Rechtsanwalt.
- (3) The contract of insurance may exclude liability for:
  1. claims against the insurer on grounds of a deliberate breach of duty,
  2. claims against the insurer on grounds of services rendered through law practices or offices established or run in other countries,
  3. claims against the insurer on grounds of services involving legal advice in non-European law and concerning oneself with such law,
  4. claims against the insurer arising from the Rechtsanwalt appearing before courts outside Europe,
  5. claims for damages due to embezzlement by staff, relatives and partners of the Rechtsanwalt.
- (4) The minimum coverage shall be 250,000 euro for each case of loss.  
The benefits paid out by the insurer for all losses caused within an insurance year may be limited to four times the minimum coverage.
- (5) It shall be permissible to agree on an excess of up to 1 per cent of the minimum coverage.
- (6) In the contract of insurance the insurer must undertake to immediately notify the responsible Regional Judicial Administration and the responsible Bar of the commencement and the end or termination of the contract of insurance and of any amendment to the contract of insurance that negatively affects the prescribed coverage.
- (7) The responsible body in the meaning of § 158c para. 2 of the Act concerning Contracts of Insurance (*Gesetz über den Versicherungsvertrag*) is the Regional Judicial Administration.
- (8) The Federal Ministry of Justice shall have powers to set a different minimum coverage by way of statutory order with the approval of the Upper House of Parliament (*Bundesrat*) after seeking the opinion of The German Federal Bar, should this be necessary in order to ensure adequate protection for the injured parties in changed financial circumstances.

#### BRAO § 51a Contractual limit on claims for compensation

- (1) The client's claims for damages due to negligence under the contract between the client and the Rechtsanwalt may be limited:
  1. to the sum of the minimum coverage by written agreement in the individual case;

2. to four times the sum of the minimum coverage under a standard contract in the case of ordinary negligence, if such coverage is afforded.
- (2) Members of a partnership are jointly and severally liable under the contract between themselves and the client. Personal liability for damages may be limited under a standard contract to individual members of a partnership who work on the case within the framework of their own professional rights and who are mentioned by name. The statement of consent to such limitation of liability may not contain any further statements and must be signed by the client.

#### BRAO § 51b Limitation period for claims to compensation

The client's claim for damages under the contract with the Rechtsanwalt shall become statute-barred three years from the date when the claim arose and no later than three years after the case has been brought to a conclusion.

#### BRAO § 52 Representation by a Rechtsanwalt

- (1) In as far as representation by Rechtsanwälte is required, a Rechtsanwalt who has been briefed to represent a party in court may only delegate such a brief to a Rechtsanwalt who may also be briefed to represent the party in the proceedings.
- (2) In the oral hearing a Rechtsanwalt who has been appointed to represent a party before a trial court may instruct a Rechtsanwalt who may not himself/herself be appointed to represent the interests of the party for whom the Rechtsanwalt is acting as counsel.

#### BRAO § 53 Appointment of a general deputy

- (1) A Rechtsanwalt must ensure that he/she has a deputy to stand in for him/her,
  1. if the Rechtsanwalt is prevented from practising his/her profession for longer than one week;
  2. if the Rechtsanwalt wishes to remain absent from his/her law practice for longer than one week.
- (2) A Rechtsanwalt may appoint his/her deputy himself/herself if the period in question does not last longer than one month and if the deputy is a Rechtsanwalt who is admitted before the same court. In other cases the deputy shall be appointed by the Regional Judicial Administration on the Rechtsanwalt's application.
- (3) On the Rechtsanwalt's application, the Regional Judicial Administration may appoint a deputy from the very outset in all cases in which the Rechtsanwalt may be unable to practise during the course of a calendar year. The opinion of the Council of the Bar must be sought before such an appointment is made.
- (4) The Regional Judicial Administration should appoint a Rechtsanwalt as deputy. It may also appoint other persons who have qualified to become a judge or trainees (*Referendare*) who have been in preparatory service for at least twelve months. §§ 7 and 20 para. 1 no. 1 shall apply accordingly.
- (5) In the cases set out in para. 1 the Regional Judicial Administration may appoint the deputy *ex officio* if the Rechtsanwalt has omitted to take a measure required under para. 2 sentence 1 or to apply for the appointment of a deputy under para. 2 sentence 2. However the deputy should not be appointed until the Rechtsanwalt has first been requested to appoint the deputy himself/herself or to submit an application in accordance with para. 2 sentence 2 and the time limit set for this has expired to no avail. A Rechtsanwalt who has been appointed *ex officio* as a deputy may only refuse to serve as deputy if there are important grounds for doing so. The Regional Judicial Administration shall decide whether the refusal is admissible after seeking the opinion of the Council of the Bar.
- (6) The Rechtsanwalt must notify the court where he/she is admitted of the appointment of a deputy in the cases set out in para.s 2 and 3. In the case set out in para. 5 the deputy must also notify the court of his/her appointment.
- (7) The deputy shall have the rights of the Rechtsanwalt for whom he/she is deputising.
- (8) The appointment may be revoked.
- (9) The deputy shall act on his/her own responsibility, but in the interests of, on the account of and at the expense of the Rechtsanwalt for whom he/she is deputising. §§ 666, 667 and 670 of the Civil Code shall apply accordingly.

- (10) A deputy who is appointed ex officio shall have the right to enter the offices of the law practice in question and to take possession of, demand surrender of and make dispositions in respect of the items belonging to the law practice, including the items that have been entrusted to the Rechtsanwalt in a fiduciary capacity. The deputy shall not be bound by instructions from the Rechtsanwalt for whom he/she is deputising. The Rechtsanwalt for whom the deputy is deputising may not unduly interfere with the deputy's work. The Rechtsanwalt must pay a deputy who has been appointed ex officio a reasonable fee for which a security must be provided if circumstances so require. If the parties cannot agree on the sum of the fee or on the security or if the security is not provided, the Council of the Bar may set the fee on the application of the Rechtsanwalt who is being deputised or on the application of the deputy. The deputy has the right to demand advances on the fee which has been agreed or set. The Bar shall stand as surety for a fee which has been set.

#### BRAO § 54 Legal acts of the deputy after the death of a Rechtsanwalt

If a Rechtsanwalt for whom a deputy has been appointed has died, any legal acts that the deputy took before the Rechtsanwalt's name was deleted from the List of Rechtsanwälte shall not be invalid merely on the ground that the Rechtsanwalt was no longer alive at the time when the deputy was appointed or at the time when the act was taken. The same shall apply to legal acts which were taken vis-à-vis the deputy before the Rechtsanwalt's name was deleted from the List of Rechtsanwälte.

#### BRAO § 55 Appointment of a liquidator to wind up the affairs of the law practice

- (1) If a Rechtsanwalt has died, the Regional Judicial Administration may appoint a Rechtsanwalt as liquidator (or another person who has qualified to become a judge) to wind up the affairs of the law practice. §§ 7 and 20 para. 1 no. 1 shall apply accordingly. Before the appointment is made, the opinion of the Bar Council must be sought. The liquidator should not usually be appointed for longer than one year. On the application of the liquidator the appointment may be renewed for a maximum of one year at a time if the liquidator provides credible proof that there are pending matters which could not yet be brought to a conclusion.
- (2) The liquidator shall be under a duty to bring pending matters to a conclusion. The liquidator shall continue to work on the current cases. In the first six months the liquidator shall also have the right to accept fresh instructions. The liquidator shall have the same rights that the deceased Rechtsanwalt had. In respect of the pending matters the liquidator shall be deemed appointed by the party in as far as this party has not made alternative arrangements for the protection of his/her rights. The liquidator must notify his/her appointment to the court where the deceased Rechtsanwalt was admitted.
- (3) § 53 para. 5 sentences 3 and 4, para.s 9 and 10 shall apply accordingly. The liquidator has the right to collect claims due to the deceased Rechtsanwalt in his/her own name on the account of the Rechtsanwalt's heirs, but is not obliged to do so unless within the framework of proceedings for setting costs.
- (4) The appointment may be revoked.
- (5) A liquidator may also be appointed for the law practice of a former Rechtsanwalt whose admission to the legal profession has expired or has been withdrawn or revoked.

#### BRAO § 56 Special obligations towards the Council of the Bar

- (1) In regulatory matters and matters concerning appeals a Rechtsanwalt must provide the Council of the Bar or an authorised member of the Council with information and produce his/her files on request or appear before the Council or the authorised member. This does not apply if and in as far as the Rechtsanwalt would thus be in breach of the duty of professional secrecy or if providing a truthful response or submitting his/her files would involve a risk of being prosecuted on grounds of a criminal offence, a breach of administrative rules or a breach of professional ethics and the Rechtsanwalt invokes this as a reason. The Rechtsanwalt's attention must be drawn to the right to refuse to supply information.
- (2) A Rechtsanwalt must immediately notify the Council of the Bar if

1. the Rechtsanwalt enters into employment or if a major change occurs under an existing contract of employment,
2. the Rechtsanwalt permanently or temporarily serves as a judge, a civil servant, a regular soldier or a soldier in short-term service,
3. the Rechtsanwalt takes up public office in the meaning of § 47 para. 2.  
On request the documents pertinent to any contract of employment must be submitted to the Council of the Bar.

#### BRAO § 57 Fine for breach of special duties

- (1) In order to compel a Rechtsanwalt to perform his/her duties under § 56 the Council of the Bar may order the Rechtsanwalt to pay a fine, including a repeat fine. The individual fine may not exceed one thousand euro.
- (2) The imposition of a fine must first be threatened in writing by the Council or the President. The threat and the assessment of the fine must be served on the Rechtsanwalt.
- (3) A Rechtsanwalt may appeal against the threat and the assessment of the fine within one month of their being served by petitioning the Higher Lawyers' Court. The petition must be submitted in writing to the Council of the Bar. If the Council considers the petition to be justified it shall grant relief; otherwise the petition must be immediately submitted to the Higher Lawyers' Court. The court that shall have jurisdiction is the Higher Lawyers' Court at the Higher Regional Court in whose district the Bar has its seat. In addition the provisions of the Code of Criminal Procedure concerning appeals (*Beschwerde*) shall apply *mutatis mutandis*. The counter-statement (§ 308 para. 1 of the Code of Criminal Procedure) shall be made by the Council of the Bar. The Public Prosecutor's office shall not be party to the proceedings. The ruling made by the Higher Lawyers' Court cannot be challenged.
- (4) The fine shall accrue to the Bar. It shall be collected on the basis of a certified copy of the assessment notice issued by the Treasurer with a certificate of enforceability in accordance with the rules that apply to the enforcement of judgments in civil litigation.

#### BRAO § 58 Inspection of personal files

- (1) A Rechtsanwalt has the right to inspect his/her personal files.
- (2) A Rechtsanwalt may only exercise the right to inspect his/her personal files in person or through another authorised Rechtsanwalt.
- (3) On inspecting the files the Rechtsanwalt or his/her authorised agent may make a record of the contents of the file or copies of individual documents.

#### BRAO § 59 The professional training of Rechtsanwälte who have passed their first state examination (*Referendare*)

- (1) A Rechtsanwalt should participate to a reasonable degree in the training of Rechtsanwälte who have passed their first state examination (*Referendare*). The Rechtsanwalt must give the *Referendar* in practical professional training at his/her law practice instruction in the duties of a Rechtsanwalt, providing guidance and opportunities to undertake practical work. The subject of the professional training should particularly be the work of a Rechtsanwalt in and out of court, dealing with clients, professional ethics, rights and duties and the organisation of a law practice.
- (2) § 157 para.s 1 and 2 of the Code of Civil Procedure does not apply to a *Referendar* who represents clients under the supervision of a Rechtsanwalt. The same applies if the *Referendar* represents the Rechtsanwalt in cases in which representation by a Rechtsanwalt is not required.

#### BRAO § 59a Professional collaboration

- (1) Rechtsanwälte may associate in a partnership with members of the Bar and members of the Chamber of Patent Attorneys, with tax consultants (*Steuerberater*), tax agents<sup>3</sup> (*Steuerbevollmächtigte*), auditors and certified accountants in order to jointly practise their professions within the framework of their own professional rights. § 137 para. 1 sentence 2 of the Code of Criminal Procedure and the provisions regarding representation before courts shall not present a barrier to this. Rechtsanwälte who are also notaries may only enter into such a partnership in relation to their profession as Rechtsanwälte. Furthermore an association with Rechtsanwälte who are also notaries shall be based on the provisions and requirements of the professional code of conduct for notaries.
- (2) A partnership shall require a joint law practice or several law practices in which at least one member of the partnership occupies a responsible position and for whom the law practice forms the focal point of his/her professional work. This shall have no bearing on § 29a.
- (3) Rechtsanwälte may also enter into partnerships with:
  1. members of the legal professions from Member States of the European Union or from other states who, under the provisions of the Act concerning the Work of European Lawyers in Germany (*Gesetz über die Tätigkeit europäischer Rechtsanwälte in Deutschland*) of 9 March 2000 (Federal Gazette I p. 182), as amended, have a right of establishment in the jurisdiction in which this Act is in force and who maintain a law practice abroad;
  2. with patent attorneys, tax consultants, tax agents, auditors or certified accountants from other states who practise a profession that is equivalent in terms of training and rights to the professions governed by the Professional Code of Conduct for Patent Attorneys (*Patentanwaltsordnung*), the Tax Consultancy Act (*Steuerberatungsgesetz*) or the Professional Code of Conduct for Auditors (*Wirtschaftsprüferordnung*) and may form a partnership with patent attorneys, tax consultants, tax agents or auditors in the jurisdiction in which this Act is in force.
- (4) Para.s 1 and 3 shall apply accordingly to offices shared by independent professionals.

#### BRAO § 59b Rule-making competence

- (1) Further details regarding professional rights and duties shall be set out in the rules of a code of professional conduct.
- (2) Within the framework of the provisions of this Act the code of professional conduct may more closely regulate:
  1. general professional duties and basic duties,
    - a) conscientiousness,
    - b) upholding independence,
    - c) confidentiality,
    - d) objectivity,
    - e) prohibition against representing conflicting interests,
    - f) handling third-party assets,
    - g) the duty to maintain a law practice;
  2. particular professional duties in connection with holding the specialised title of "Specialised Lawyer" (*Fachanwalt*),
    - a) definition of the fields of law in which further titles of "*Fachanwalt*" may be granted,
    - b) a statement of the preconditions for granting the specialised title of "*Fachanwalt*" and the procedure for granting, withdrawing and revoking permission to use such a title;
  3. particular professional duties in connection with advertising and details concerning self-defined fields of specialisation;
  4. particular professional duties in connection with the denial of the right to practise;
  5. particular professional duties
    - a) in connection with accepting instructions, looking after a case and bringing a case to a conclusion,
    - b) towards persons seeking access to justice with the help of legal aid for legal advice and litigation,
    - c) in giving advice to persons with a low income who are seeking access to justice,
    - d) in keeping files;
  6. particular professional duties vis-à-vis courts and authorities,

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<sup>3</sup> Translator's note: A tax agent (*Steuerbevollmächtiger*) is a person qualified to give advice in tax matters, but of a lower status than a *Steuerberater*

- a) obligations in using files provided for inspection and the knowledge gained from them,
- b) obligations in the case of the service of documents,
- c) wearing the robes of the profession;
- 7. particular professional duties in agreeing on and billing for the fees of Rechtsanwälte and in their collection;
- 8. particular professional duties towards the Bar in regulatory matters, professional behaviour vis-à-vis members of the Bar, obligations in connection with professional collaboration, obligations in connection with the employment of Rechtsanwälte, training Rechtsanwälte and also employing other staff;
- 9. particular professional duties in cross-border legal services.

## Part two Rechtsanwaltsgesellschaften<sup>4</sup>

### BRAO § 59c Admission as a Rechtsanwaltsgesellschaft, participation in professional groupings

- (1) Limited liability companies whose objects include legal advice and representation in legal matters may be admitted as Rechtsanwaltsgesellschaften.
- (2) It is not permitted for Rechtsanwaltsgesellschaften to form professional groupings in order to practise jointly.

### BRAO § 59d Preconditions for admission

Admission shall be granted if

- 1. the company meets the requirements set out in §§ 59c, 59e und 59f;
- 2. the company is not in a state of financial deterioration;
- 3. evidence is provided of professional indemnity insurance (§ 59j) or a provisional coverage note is produced.

### BRAO § 59e Partners

- (1) Only Rechtsanwälte and members of the professions specified in § 59a para. 1 sentence 1, para. 3 may be partners in a Rechtsanwaltsgesellschaft. They must practise professionally in the Rechtsanwaltsgesellschaft. § 59a para. 1 sentences 3 and 4 and § 172a shall apply accordingly.
- (2) The partners are not permitted to practise the profession that they practise in the Rechtsanwaltsgesellschaft in any other professional association.
- (3) The majority of the shares and voting rights must be held by Rechtsanwälte. If partners do not have the right to practise one of the professions specified in § 59a para. 1 sentence 1, para. 3 they shall have no voting rights.
- (4) Shares in the Rechtsanwaltsgesellschaft may not be held on the account of third parties and third parties may have no share in the profits of a Rechtsanwaltsgesellschaft.
- (5) Partners may only authorise partners to exercise partners rights if they have voting rights, are members of the same profession or are Rechtsanwälte.

### BRAO § 59f Management

- (1) A Rechtsanwaltsgesellschaft must be responsibly managed by the Rechtsanwälte. The majority of the managing directors must be Rechtsanwälte.
- (2) A person may only be a managing director if this person has the right to practise one of the professions defined in § 59a para. 1 sentence 1, para. 3. § 59e para. 2 shall apply accordingly.
- (3) Para. 1 sentence 2 and para. 2 shall apply accordingly to "prokurists"<sup>5</sup> and agents empowered to bind the corporation in all aspects of its business (*Handlungsbevollmächtigte*).

<sup>4</sup> These law companies similar to limited liability companies.

<sup>5</sup> Translator's note: A prokurist holds a power of attorney and may act on behalf of the owners in respect of all commercial transactions in and out of court; this authority must be entered in the Commercial Register.

- (4) The independence of the Rechtsanwälte who are authorised as managing directors or authorised under para. 3 must be guaranteed when they are practising as Rechtsanwälte. It is not permissible for partners to exert influence, namely through issuing instructions or through contractual obligations.

#### BRAO § 59g Admission procedure

- (1) The Regional Judicial Administration in whose area of authority the Rechtsanwalts-gesellschaft has its principal place of business shall take the decision concerning the application for admission as a Rechtsanwalts-gesellschaft. An executed copy or a publicly certified copy of the articles of association must be submitted with the application.
- (2) Before taking a decision, the Regional Judicial Administration shall seek an expert opinion from the Council of the Bar in whose district the Rechtsanwalts-gesellschaft has its principal place of business. The opinion should also contain comments on all preconditions for admission set out in § 59d. § 8 para.s 3 and 4 shall apply accordingly.
- (3) If the Council of the Bar states in the opinion that the applicant does not satisfy the conditions for admission, the Regional Judicial Administration shall stay the decision regarding the application for admission as a Rechtsanwalts-gesellschaft and shall send the applicant a certified copy of the opinion.
- (4) The decision regarding the application for admission as a Rechtsanwalts-gesellschaft may be stayed if proceedings have been instituted against a partner or an authorised agent in the meaning of § 59f with the aim of withdrawing or revoking his/her admission to the legal profession or appointment or if a provisional professional disbarment or ban against acting as counsel has been issued. However a decision shall be taken regarding the application for registration as a Rechtsanwalts-gesellschaft if it is already inadmissible irrespective of the outcome of the proceedings mentioned in sentence 1.
- (5) § 9 para.s 2 to 4 and §§ 11 and 12 para. 1 shall apply accordingly to the admission procedure. The court that shall have jurisdiction in the meaning of § 9 para. 2 sentence 2, § 11 para. 2 sentence 2 shall be the Higher Lawyers' Court at the Higher Regional Court in whose district the Rechtsanwalts-gesellschaft has its principal place of business.

#### BRAO § 59h Expiry, withdrawal and revocation of admission

- (1) Admission shall expire on the dissolution of the Rechtsanwalts-gesellschaft.
- (2) Admission shall be withdrawn if it should transpire after admission that admission should have been refused. § 14 para. 3 shall apply accordingly.
- (3) Admission shall be revoked if the Rechtsanwalts-gesellschaft no longer satisfies the preconditions set out in §§ 59c, 59e, 59f, 59i and 59j, unless the Rechtsanwalts-gesellschaft has brought about the conditions prescribed by law within a reasonable period of time to be determined by the Regional Judicial Administration.  
If the precondition set out in § 59e para.s 1 and 3 should no longer apply due to a case of inheritance, the time limit must be at least one year. The set term shall start to run when the case of inheritance occurs.
- (4) Furthermore admission shall be revoked if
  1. the Rechtsanwalts-gesellschaft has renounced the rights conferred by admission in the form of a written statement to the Regional Judicial Administration;
  2. the Rechtsanwalts-gesellschaft has fallen into a state of financial deterioration unless this in no way adversely affects the interests of persons seeking access to justice.
- (5) The withdrawal or the revocation of admission shall be ordered by the Regional Judicial Administration in the *Land* in which the Rechtsanwalts-gesellschaft has its principal place of business at the time that proceedings are instituted. § 16 para.s 2, 4 to 7 shall apply accordingly. The court that shall have jurisdiction in the meaning of § 16 para. 5 sentence 2 shall be the Higher Lawyers' Court at the Higher Regional Court in whose district the Rechtsanwalts-gesellschaft has its principal place of business.
- (6) If the Rechtsanwalts-gesellschaft has forfeited its rights of admission, a liquidator may be appointed on its behalf to wind up its affairs if the persons appointed as legal representatives can offer no satisfactory guarantee that pending matters will be brought to a proper conclusion. § 55

shall apply accordingly. The partners shall be jointly and severally liable for the liquidator's set fee. This shall not affect § 53 para. 10 sentence 7.

#### BRAO § 59i The law practice and its branch office

- (1) The Rechtsanwaltsgesellschaft must keep a law practice in the locality where it has its principal place of business, a responsible position being occupied by at least one managing Rechtsanwalt for whom the law practice forms the focal point of his/her professional practise. This shall not affect § 29a.
- (2) Para. 1 shall apply accordingly to branch offices.

#### BRAO § 59j Professional indemnity insurance

- (1) The Rechtsanwaltsgesellschaft must take out professional indemnity insurance and maintain such insurance as long as it is admitted. § 51 para.s 1 to 3 and 5 to 7 shall apply accordingly.
- (2) The minimum coverage shall be 2,500,000 euro for each case of loss.  
The benefits paid out by the insurer for all losses suffered in an insurance year may be limited to the minimum coverage multiplied by the number of partners and managing directors who are not partners. However the maximum annual benefits for all losses suffered in an insurance year must be at least four times the sum of the minimum coverage.
- (3) If it should be necessary to ensure adequate protection for injured parties in changed financial circumstances, the Federal Ministry of Justice shall have powers to set a different minimum coverage by way of statutory order with the approval of the Upper House of Parliament (Bundesrat) and after seeking the opinion of The German Federal Bar.
- (4) If the professional indemnity insurance is not maintained or not maintained to the required degree, the partners and the managing directors shall be held personally liable in addition to the company. The extent of their liability shall be equal to the sum of the shortfall in coverage

#### BRAO § 59k The name of the Rechtsanwaltsgesellschaft

- (1) The name of the Rechtsanwaltsgesellschaft must contain the name of at least of one of the partners who is a Rechtsanwalt and also the word "Rechtsanwaltsgesellschaft". If the Rechtsanwaltsgesellschaft is to continue a partnership, it shall be permissible to include an approved and abbreviated form in the name of the company in addition to or instead of the name of the partner as required in sentence 1. Other elements in the name are only permissible in as far as they are prescribed by law.
- (2) No Rechtsanwaltsgesellschaften other than those that are registered as Rechtsanwaltsgesellschaften may call themselves a "Rechtsanwaltgesellschaft".

#### BRAO § 59l Representation before courts and authorities

A Rechtsanwaltsgesellschaft may be engaged to act as Rechtsanwalt in a trial or to act as representative in proceedings. In doing so it shall have the rights and duties of a Rechtsanwalt. It shall act through its directors and officers who must be persons who, in the individual case, satisfy the statutory conditions for the provision of legal services. Counsel for the defence in the meaning of §§ 137 et seq. of the Code of Criminal Procedure may only be the person acting on behalf of the Rechtsanwaltsgesellschaft.

#### BRAO § 59m Duties to provide information, applicable rules, duty to maintain confidentiality

- (1) The Rechtsanwaltsgesellschaft must immediately notify the Regional Judicial Administration and the Bar of any amendment to its articles of association, any change in its partners or in the identity of the authorised representative in the meaning of § 59f and of any branch offices which are established or dissolved. A publicly certified copy of the relevant deed must be submitted. If the change is registered in the Commercial Register, a certified copy of the entry must be submitted retrospectively.
- (2) The rules set out in Part Three and Part Four of the Chapter Two, sections 43 to 43b, 44, 48, 49a to 50, 51a para. 1, sections 51b, 52 para. 2, § 56 para. 1 and §§ 57 to 59 und 163 shall apply accordingly to Rechtsanwaltsgesellschaften.



- (3) The partners and the members of the supervisory bodies provided for by law or in the articles of association are under a duty to maintain confidentiality.

## Chapter Four The Bar

### Part One General

#### BRAO § 60 Composition and seat of the Bar

- (1) Rechtsanwälte who are admitted in the district of a Higher Regional Court and Rechtsanwaltsgesellschaften which have their principal place of business in such districts shall associate to form a Bar. Members of the Bar, in as far as they are not Rechtsanwälte or members of one of the professions defined in §§ 206, 209 para. 1, may also include the managing directors of the Rechtsanwaltsgesellschaften mentioned in sentence 1.
- (2) The Bar shall have its seat in the locality of the Higher Regional Court.

#### BRAO § 61 Formation of a further Bar

- (1) The Regional Judicial Administration may establish a further Bar in the district of a Higher Regional Court if more than five hundred Rechtsanwälte or Rechtsanwaltsgesellschaften are admitted in the district. The opinion of the Council of the Bar must be sought before a further Bar is established. The Regional Judicial Administration shall decide to which Bar the Rechtsanwälte who are admitted before the Higher Regional Court shall belong and how the districts of the Regional Courts shall be divided up among the regional Bars.
- (2) The Regional Judicial Administration shall determine where the further Bar is to have its seat.

#### BRAO § 62 The status of the Bar

- (1) A Bar is a public corporation.
- (2) The Regional Judicial Administration shall be responsible for the state regulation of the Bar. Regulatory measures shall be limited to ensuring that the law and the internal rules are observed and in particular that the Bar performs the duties assigned to it.

### Part two The constituent bodies of the Bar

#### 1. The Council

##### BRAO § 63 Composition of the Council

- (1) The Bar shall have a Council.
- (2) The Council shall consist of seven members. The Assembly of the Bar may decide on a higher number.
- (3) The Council shall adopt rules of procedure.

##### BRAO § 64 Elections to the Council

- (1) The members of the Council shall be elected by the Assembly of the Bar.
- (2) Further details shall be set out in the rules of procedure of the Bar.

##### BRAO § 65 Eligibility for election

Only persons who

1. are members of the Bar,
2. have reached the age of thirty-five and
3. have been practising as a Rechtsanwalt for an uninterrupted period of at least five years may be elected to sit on the Council.

BRAO § 66 Ineligibility for election

A Rechtsanwalt

1. against whom proceedings have been instituted before the Lawyers' Disciplinary Court or who has been disbarred from practising or acting as counsel (sections 150, 161a);
2. who is being publicly prosecuted on grounds of a criminal offence which may mean that the person concerned becomes ineligible for public office;
3. who has incurred a caution or a fine in the last five years or who has been banned from acting as counsel (§ 114 para. 1 Nr. 4) in the last ten years or who has been excluded from the legal profession in the last fifteen years may not be elected to sit on the Council.

BRAO § 67 The right to refuse to be elected

A Rechtsanwalt

1. who has reached the age of sixty-five;
2. who has been a member of the Council at any time in the last four years;
3. who cannot properly carry out his/her duties as a member of the Council for more than merely a temporary period may refuse to be elected to sit on the Council.

BRAO § 68 Term of office

- (1) The members of the Council shall be elected for a period of four years. Re-election shall be permissible.
- (2) Every two years half of the members shall resign from the Council. In the case of uneven numbers, the larger number shall resign the first time. The members resigning for the first time shall be determined through a draw.
- (3) If the number of members on the Council is increased, para. 2 sentence 2 shall apply accordingly to the new members who resign at the end of the second year.
- (4) If an election necessitated by an increase in the number of members on the Council is held at the same time as new elections, the two elections shall be held separately.

BRAO § 69 The premature retirement of a member of the Council

- (1) A Rechtsanwalt shall retire as a member of the Council
  1. if the Rechtsanwalt is no longer a member of the Bar or is no longer eligible for election for the reasons stated in § 66 no. 3;
  2. if the Rechtsanwalt resigns from office.
- (2) The Rechtsanwalt must submit a written statement to the Council announcing his/her intention to resign from office. The statement may not be revoked.
- (3) If a member prematurely retires from the Council, a new member shall be elected for the remainder of the former member's term of office. This shall be done at the next Assembly of the Bar. The Assembly of the Bar may refrain from the first election if the number of members on the Council does not fall below seven and if the remainder of the former member's term of office would have been no longer than one year.
- (4) If a public prosecution in the meaning of § 66 no. 2 has been instituted against a member of the Council or if proceedings have been instituted before the Lawyers' Disciplinary Court, his/her membership of the Council shall lapse until the proceedings have been brought to a conclusion. If the member has been disbarred or banned from acting as counsel (§§ 150, 161a), his/her membership shall lapse for as long as this is the case. If there is a suspicion that a member of the Council has committed a negligent breach of his/her professional duties, the member shall be excluded from acting for the Bar in this matter.

#### BRAO § 70 Meetings of the Council

- (1) The Council shall be convened by the President.
- (2) The President must convene a meeting if three members of the Council apply for this in writing indicating the matter to be discussed.
- (3) Further details shall be set out in the rules of procedure of the Council.

#### BRAO § 71 Quorum of the Council

The Council shall form a quorum if at least half of its members are present or participate in a written ballot.

#### BRAO § 72 Resolutions of the Council

- (1) The resolutions of the Council shall be taken by a simply majority of the votes cast. The same applies to the elections to be carried out by the Council. If there is a parity of votes, the Chairperson of the Council shall give the casting vote. In the case of elections the decision shall be taken by means of a draw.
- (2) A member may not vote on matters in which he/she has an interest. However this shall not be the case in elections.
- (3) Minutes must be taken of the resolutions of the Council and the results of elections. They shall be signed by the Chairperson and by the Secretary.
- (4) Resolutions passed by the Council may be taken by written ballot if no member of the Council raises an objection.

#### BRAO § 73 The duties of the Council

- (1) The Council must perform the duties assigned to it by law. It shall protect and promote the interests of the Bar.
- (2) The Council is under a particular duty,
  1. to advise and instruct the members of the Bar in matters of professional ethics;
  2. on application, to mediate between the members in cases of dispute;
  3. on application, to mediate between members of the Bar and their clients in cases of dispute;
  4. to monitor the performance of the duties incumbent on the members and to take steps to issue reprimands when required;
  5. to propose Rechtsanwälte for appointment as members of the Lawyers' Disciplinary Court and of the Higher Lawyers' Court;
  6. to make proposals to The German Federal Bar in accordance with §§ 107 and 166;
  7. to render account to the Assembly of the Bar every year concerning the administration of the assets;
  8. to provide opinions that are required by a Regional Judicial Administration, a court or an administrative authority of the *Land*;
  9. to co-operate in training and examining students and trainee Rechtsanwälte (*Referendare*) and in particular to propose qualified examiners and instructors for study groups;
  10. to propose the Rechtsanwälte who are members of the judicial examination committees.
- (3) The Council may assign the tasks set out in para. 2 no. 1 to 3 to individual members of the Council.

#### BRAO § 74 The Council's right to issue reprimands

- (1) The Council may reprimand a Rechtsanwalt on grounds of conduct that has caused the Rechtsanwalt to breach his/her duties, if the Rechtsanwalt bears only little blame and an application for the institution of disciplinary proceedings does not seem necessary. § 113 para.s 2 and 3, § 115b and § 118 para. 2 shall apply accordingly.
- (2) The Council may no longer issue a reprimand if disciplinary proceedings against the Rechtsanwalt have already commenced or if more than three years have elapsed since the breach of duty. A

reprimand may not be issued while proceedings are pending on an application of the Rechtsanwalt in accordance with § 123.

- (3) The Rechtsanwalt must be given a hearing before a reprimand is issued.
- (4) Reasons must be given for the notice of reprimand that the Council issues to a Rechtsanwalt on grounds of the Rechtsanwalt's conduct. It must be served on the Rechtsanwalt. A copy of the notice of reprimand must be sent to the Public Prosecutor's office at the Higher Regional Court.
- (5) A Rechtsanwalt may appeal against the notice of reprimand within one month of it having been served. The Council shall take a decision regarding the appeal. Para. 4 shall apply accordingly.
- (6) Paragraphs 1 to 5 shall apply accordingly to persons who belong to a Bar in accordance with § 60 para. 1 sentence 2.

#### BRAO § 74a Petition to the Lawyers' Disciplinary Court

- (1) If the appeal against the notice of reprimand from the Council of the Bar is dismissed, the Rechtsanwalt may petition the Lawyers' Disciplinary Court within one month of the notice having been served. The court that shall have jurisdiction shall be the Lawyers' Disciplinary Court in the locality where the Bar whose Council has issued the reprimand has its seat.
- (2) The petition must be submitted in writing to the Lawyers' Disciplinary Court. The proceedings shall be governed mutatis mutandis by the provisions of the Code of Criminal Procedure concerning appeals. The counter-statement (§ 308 para. 1 of the Code of Criminal Procedure) shall be made by the Council of the Bar. The Public Prosecutor's office shall not be party to the proceedings. An oral hearing shall be held if the Rechtsanwalt has filed such a petition or if the Lawyers' Disciplinary Court considers this to be necessary. The Council of the Bar, the Rechtsanwalt and the Rechtsanwalt's defence counsel must be notified of the date and the venue for the oral hearing. However in order to investigate the truth, the court shall, ex officio, extend the taking of evidence to all facts and evidence that are of importance for the decision.
- (3) The notice of reprimand may not be overruled on the ground that the Council of the Bar has wrongly assumed that only little blame attaches to the Rechtsanwalt and that the application for the institution of proceedings before the Lawyers' Disciplinary Court is not necessary. If the preconditions under which disciplinary sanctions are not to be taken (§ 115b) or not to be instituted or continued (§ 118 para. 2) are not met until after the Council has issued the notice of reprimand, the Lawyers' Disciplinary Court shall overrule the notice of reprimand. Reasons must be given for the ruling. It cannot be challenged.
- (4) The Lawyers' Disciplinary Court before which the petition was filed must immediately provide the Public Prosecutor's office at the Higher Regional Court with a copy of the petition. The Public Prosecutor's office must also be sent a copy of the ruling in which a decision is taken regarding the petition.
- (5) If the Public Prosecutor's office institutes disciplinary proceedings against the Rechtsanwalt on grounds of the same conduct as that for which the Council of the Bar has issued a reprimand and no ruling has yet been pronounced concerning the petition against the reprimand, the petition proceedings shall be suspended until the disciplinary proceedings have been concluded and a final decision has been pronounced. In the cases set out in § 115a para. 2 the Lawyers' Disciplinary Court shall find that the reprimand is invalid when the suspension comes to an end.
- (6) Para.s 1 to 5 shall apply accordingly to persons who belong to the Bar in accordance with § 60 para. 1 sentence 2.

#### BRAO § 75 Services rendered by the Council in an honorary capacity

The members of the Council shall render their services on a gratuitous basis. They shall, however, receive reasonable compensation for the expenses they incur in rendering such services and may also claim travelling expenses.

#### BRAO § 76 The duty of the members of the Council to maintain professional confidentiality

- (1) In rendering services for the Council the members of the Council must maintain confidentiality concerning matters that come to their knowledge regarding Rechtsanwälte, applicants and other persons and may not disclose such matters to any person. They must keep such matters

confidential even after retiring from the Council. Rechtsanwälte who are engaged to assist with the work and employees of the Bar shall also be obliged to maintain confidentiality.

- (2) In judicial proceedings the persons mentioned in para. 1 may not make any unapproved statements concerning matters that have come to their knowledge regarding Rechtsanwälte, applicants and other persons as a result of serving on the Council.
- (3) Approval to make a statement shall be given by the Council of the Bar, exercising its discretion in due assessment of the circumstances. Approval shall only be refused if this is undeniably necessary in view of considerations given to the status or the duties of the Bar or the justified concerns of the persons about whom these facts have become known. This shall have no bearing on § 28 para. 2 of the Act concerning the Federal Constitutional Court (*Gesetz über das Bundesverfassungsgericht*).

#### BRAO § 77 Divisions of the Council

- (1) The Council may form several divisions if this is permitted by the Bar's rules of procedure. It shall delegate certain matters to the divisions which shall then conduct such affairs independently.
- (2) Each division must comprise at least three members of the Council. The members of the division shall select a Head of Division and a Division Secretary from their midst and also deputies for such persons.
- (3) Before the beginning of the calendar year, the Council shall determine the number of divisions, delegate matters to the divisions and determine the members of the individual divisions. Each member of the Council may belong to several divisions. The arrangements may only be altered during the course of the year if this is necessitated by an excessive workload for a division or by a change in or the permanent incapacitation of individual members of the divisions.
- (4) The Council may authorise the divisions to hold meetings outside the locality where the Bar has its seat.
- (5) The divisions shall have the same rights and duties as the Council within their areas of responsibility.
- (6) The Council shall take a decision in lieu of a division if it considers this to be appropriate or if the division or the Head of Division makes an application to this effect.

## 2. The Presidency

#### BRAO § 78 Composition and election

- (1) The Council shall elect a Presidency from among its members.
- (2) The Presidency shall consist of
  1. the President,
  2. the Deputy President,
  3. the Secretary,
  4. the Treasurer.
- (3) The Council may increase the number of Presidency members.
- (4) The Presidency shall be elected forthwith after each ordinary election of the Council. If a member of the Presidency prematurely retires, a new member shall be elected within three months for the remainder of the former member's term of office.

#### BRAO § 79 Duties of the Presidency

- (1) The Presidency shall handle the affairs of the Council as assigned to it under this Act or by virtue of a resolution of the Council.
- (2) The Presidency shall take a decision concerning the administration of the assets of the Bar. It shall report to the Council on this subject every three months.

#### BRAO § 80 Duties of the President

- (1) The President shall represent the Bar both in and out of court.
- (2) The President shall arrange the business transactions of the Bar and of the Council. The President shall execute the resolutions taken by the Council and by the Bar.
- (3) The President shall chair the meetings of the Council and the Assembly of the Bar.
- (4) Further duties may be assigned to the President in the rules of procedure of the Council and of the Bar.

#### BRAO § 81 Reports on the work of the Bar and on election results

- (1) Each year the President shall provide the Regional Judicial Administration with a written report on the activities of the Bar and of the Council.
- (2) The President shall notify the Regional Judicial Administration and The German Federal Bar of the results of the elections to the Council and to the Presidency.

#### BRAO § 82 Duties of the Secretary

The Secretary shall take the minutes of the meetings of the Council and the Assembly of the Bar. The Secretary shall conduct the correspondence of the Council in as far the President does not reserve the rights to this function.

#### BRAO § 83 Duties of the Treasurer

- (1) The Treasurer shall manage the assets of the Bar in accordance with the instructions given by the Presidency. The Treasurer shall have the right to receive monies.
- (2) The Treasurer shall monitor receipts of the dues.

#### BRAO § 84 Collection of outstanding dues

- (1) Outstanding dues, levied charges and administration fees shall be collected on the basis of the payment demand issued by the Treasurer with a certificate of enforceability in accordance with the rules that apply to the enforcement of judgments in civil litigation.
- (2) Debt enforcement measures, however, may not be commenced until two weeks after the service of the enforceable payment demand.
- (3) The restrictive rule in § 767 para. 2 of the Code of Civil Procedure shall not apply to objections which concern the claim itself. In legal actions seeking to enforce objections against the claim itself the court that shall have jurisdiction shall, depending on the amount in dispute, be the Local Court or the Regional Court where the debtor has its general place of jurisdiction in Germany,.

### 3. The Assembly of the Bar

#### BRAO § 85 Convocation of the Assembly

- (1) The Assembly of the Bar shall be convened by the President.
- (2) The President must convene the Assembly of the Bar if one tenth of its members make a written application indicating the matter that is to be discussed at the Assembly.
- (3) If the absence of anything to the contrary in the Bar's rules of procedure, the Assembly shall be held in the locality where the Bar has its seat.

#### BRAO § 86 Invitation and notice

- (1) The President shall convene the Assembly of the Bar in writing or through a public invitation announced in the journals indicated in the rules of procedure of the Bar.
- (2) The Assembly must be convened at least two weeks in advance. The date on which the invitation is sent out or published and the date of the Assembly shall not be included when calculating the two weeks.
- (3) In urgent cases the President may convene the Assembly at shorter notice.

#### BRAO § 87 Announcement of the agenda

- (1) When the Assembly of the Bar is convened the subject matter must be indicated on which a resolution is to be taken at the Assembly.
- (2) No resolutions may be taken regarding matters which have not been properly announced.

#### BRAO § 88 Elections and resolutions of the Bar

- (1) The preconditions under which the Assembly shall form a quorum shall be specified in the Bar's rules of procedure.
- (2) The members may only exercise their voting rights in person.
- (3) The resolutions of the Assembly shall be taken by a simple majority. The same applies to the elections to be held by the Bar. If there is parity of votes, the Chairperson shall have the casting vote. In the case of elections the matter shall be decided by means of a draw.
- (4) A member may not vote in a matter in which the member has an interest. However this shall not be the case in elections.
- (5) Minutes shall be taken of the resolutions passed by the Bar and the results of elections. They shall be signed by the Chairperson and the Secretary.

#### BRAO § 89 The duties of the Assembly of the Bar

- (1) The Assembly of the Bar must perform the duties assigned to it by law. It must discuss matters that are of general importance for the legal profession.
- (2) The Assembly shall be under a particular duty
  1. to elect the Council;
  2. to determine the dues, the charges to be levied and the administration fees and the dates when these monies are due for payment;
  3. to establish welfare institutions for Rechtsanwälte and their surviving dependants;
  4. to approve the funds that are necessary in order to pay the costs in matters which concern the general interests of the community;
  5. to prepare guidelines for compensation for expenses and the reimbursement of travelling expenses to the members of the Council and of the Lawyers' Disciplinary Court and to the court recorders in the main proceedings at the Lawyers' Disciplinary Court;
  6. to audit the statement of the Council regarding the income and expenditure of the Bar and the administration of its assets and to pass a resolution regarding the exoneration of the Council.
  - 7.
- (3) The Bar shall adopt rules of procedure.

### Part three Invalidity of elections and resolutions

#### BRAO § 90 Preconditions for elections and resolutions being held invalid

- (1) Elections or resolutions of the Council, the Presidency or the Assembly of the Council of the Bar may be declared invalid or null and void by the Higher Lawyers' Court on the petition of the Regional Judicial Administration if they have come about in breach of the law or the internal rules or if their contents are inconsistent with the law or the internal rules.
- (2) The petition may also be filed by a member of the Bar, but with regard to a resolution only if this resolution has offended the member's rights.

#### BRAO § 91 Proceedings before the Higher Lawyers' Court

- (1) The petition to declare an election invalid or a resolution null and void must be in writing and made against the Bar. If the applicant is the President or another member of the Council, the Bar shall be represented by a member who has been specially appointed from the members of the Bar by the presiding judge of the Higher Lawyers' Court.

- (2) The petition must state the reasons why the election should be declared invalid or the resolution declared null and void. Detailed evidence should be provided.
- (3) A member of the Bar may only file the petition within one month of the election or the passing of the resolution.
- (4) The Higher Lawyers' Court must notify the Bar of the petition and request a statement to be made within a period of time to be set by the presiding judge, enclosing details of the matter.
- (5) The Higher Lawyers' Court shall take a decision regarding the petition through a ruling for which reasons must be given.
- (6) An immediate appeal against the ruling of the Higher Lawyers' Court shall only be possible if the court has allowed such an appeal in its ruling. The Higher Lawyers' Court may only allow an immediate appeal if the matter is of fundamental importance. The immediate appeal shall be decided by the Federal Supreme Court.
- (7) The proceedings shall be governed by the provisions of § 40 para.s 2 and 4.

## Chapter Five The Lawyers' Disciplinary Court, the Higher Lawyers' Court and the Federal Supreme Court in matters concerning Rechtsanwälte

### Part One The Lawyers' Disciplinary Court

#### BRAO § 92 Formation of the Lawyers' Disciplinary Court

- (1) A Lawyers' Disciplinary Court shall be established for the district of the Bar. It shall have its seat in the same locality as the Bar.
- (2) Several divisions shall be formed at the Lawyers' Disciplinary Court if this should be necessary. The number of divisions shall be determined by the Regional Judicial Administration. The opinion of the Council of the Bar must first be sought.
- (3) The Regional Judicial Administration shall be the regulatory body for the Lawyers' Disciplinary Court.

#### BRAO § 93 The composition of the Lawyers' Disciplinary Court

- (1) The Lawyers' Disciplinary Court shall have the required numbers of presiding judges and further members. If several members have been appointed, one of them shall be installed as the Managing Presiding Judge. The Presiding Judge and a further member of the Bar must be qualified to take office as a judge.
- (2) The Regional Judicial Administration shall seek the opinion of the Council of the Bar before appointing the Presiding Judge and installing the Managing Presiding Judge.

#### BRAO § 94 Appointment of the members of the Lawyers' Disciplinary Court

- (1) Only Rechtsanwälte may be appointed as members of the Lawyers' Disciplinary Court. They must belong to the Bar for whose district the Lawyers' Disciplinary Court has been constituted.
- (2) The members of the Lawyers' Disciplinary Courts shall be appointed by the Regional Judicial Administration. They shall be selected from the list of proposed candidates submitted to the Regional Judicial Administration by the Council of the Bar. The Regional Judicial Administration shall determine the required number of members; it shall first seek the opinion of the Council of the Bar. The list of proposed candidates from the Council of the Bar must contain at least fifty per cent more than the required number of Rechtsanwälte.
- (3) Only a Rechtsanwalt who is eligible for election to the Council of the Bar may become a member of the Lawyers' Disciplinary Court. (§§ 65, 66). The members of the Lawyers' Disciplinary Court may not at the same time belong to the Council of the Bar or to the Statutory Assembly nor may they serve full time or part time for the Bar.
- (4) The members of the Lawyers' Disciplinary Court shall be appointed for a term of four years; they may be reappointed after their term of office has come to an end.



#### BRAO § 95 The legal status of the members of the Lawyers' Disciplinary Court

- (1) The members of the Lawyers' Disciplinary Court shall be judges serving in an honorary capacity. In their capacity as honorary judges of the Lawyers' Disciplinary Court they shall have the status of professional judges for their term of office. They shall be paid compensation by the Bar for the expenses incurred in rendering their services and also reimbursement for travelling expenses.
- (2) A member of the Lawyers' Disciplinary Court must be removed from office on the application of the Regional Judicial Administration,
  1. if it subsequently becomes known that the member should not have been appointed;
  2. if any circumstance should subsequently occur that speak against the appointment;
  3. if the member is grossly in breach of an official duty.The application shall be decided by the Higher Lawyers' Court. Before the decision is taken the Rechtsanwalt must be given a hearing and the opinion of the Council of the Bar must be sought. The decision shall be final.
- (3) The Regional Judicial Administration may dismiss a member of the Lawyers' Disciplinary Court from office on the member's application if the member would be prevented from properly conducting his/her official duties on grounds of health for an unforeseeable time.
- (4) The term of office of a member of the Lawyers' Disciplinary Court who is appointed as a honorary judge at a court of higher instance shall end on such an appointment.

#### BRAO § 96 Composition of the divisions of the Lawyers' Disciplinary Court

The divisions of the Lawyers' Disciplinary Court shall decide on the appointment of their three members including the Presiding Judge.

#### BRAO § 97 The division of affairs

The division of affairs at the Lawyers' Disciplinary Court shall be governed accordingly by the rules of Part Two and by § 70 para. 1 of the Court Constitution Act (*Gerichtsverfassungsgesetz*).

#### BRAO § 98 The registry and the rules of procedure

- (1) A registry shall be established at the Lawyers' Disciplinary Court.
- (2) The necessary office staff, offices and resources for other pertinent requirements shall be provided by the Bar.
- (3) The administrative supervision of the registry shall be in the hands of the Presiding Judge of the Lawyers' Disciplinary Court; in the case set out in § 92 para. 2 the Managing Presiding Judge shall be responsible for administrative supervision.
- (4) The management of the affairs of the Lawyers' Disciplinary Court shall be regulated by rules of procedure to be determined by the members of the Lawyers' Disciplinary Court. They shall require endorsement by the Regional Judicial Administration.

#### BRAO § 99 Administrative and judicial assistance

- (1) The Lawyers' Disciplinary Courts must provide each other with administrative and judicial assistance.
- (2) On request other courts and administrative authorities shall also provide the Lawyers' Disciplinary Court with administrative and judicial assistance. The Lawyers' Disciplinary Courts shall have the same duty towards other courts and authorities.
- (3) At the Lawyers' Disciplinary Court requests for judicial assistance may be dealt with by a single member.

### Part Two The Higher Lawyers' Court

#### BRAO § 100 Formation of the Higher Lawyers' Court

- (1) The Higher Lawyers' Court shall be established at the Higher Regional Court. § 92 para. 3 shall apply accordingly.
- (2) If there are several Higher Regional Courts in one *Land*, the government of the *Land* may, by statutory order, establish the Higher Lawyers' Court for the districts of all or several Higher Regional Courts at one or several Higher Regional Courts or at the highest Regional Court if such a concentration is expedient to the administration of justice in matters concerning Rechtsanwälte, particularly to ensure uniform court rulings. The opinions of the Councils of the regional Bars concerned must first be sought.
- (3) By agreement of the participating *Länder* the duties assigned to the Higher Lawyers' Court under this Act may be delegated to the Higher Lawyers' Court of a *Land* that next has jurisdiction, also in respect of the area of another *Land*.
- (4) Several *Länder* may agree to establish a joint Higher Lawyers' Court at the Higher Regional Court or at the highest Regional Court of a *Land*.

#### BRAO § 101 The composition of the Higher Lawyers' Court

- (1) The Higher Lawyers' Court shall have a President, the required number of further presiding judges and also Rechtsanwälte and professional judges as further members. The President and the further presiding judges must be qualified to sit as judges.
- (2) If necessary, several senates may be formed at the Higher Lawyers' Court. Further arrangements shall be made by the Regional Judicial Administration. The opinion of the Council of the Bar must first be sought.
- (3) The persons appointed as President of the Higher Lawyers' Court and as presiding judges of the senates must be Rechtsanwälte who are members of the Higher Lawyers' Court. § 93 para. 2 shall apply accordingly.

#### BRAO § 102 Appointment of professional judges as members of the Higher Lawyers' Court

- (1) The members of the Higher Lawyers' Court who are professional judges shall be appointed by the Regional Judicial Administration from the permanent members of the Higher Regional Court. They shall serve for a term of four years. In the cases set out in § 100 para. 2 the professional judges may also be appointed from the permanent members of the other Higher Regional Courts or the highest Regional Court.
- (2) The members of a joint Higher Lawyers' Court who are professional judges shall be appointed from the permanent members of the Higher Regional Courts of the participating *Länder*, as set out in the agreement made by the *Länder* (§ 100 para. 4).

#### BRAO § 103 Appointment of Rechtsanwälte as members of the Higher Lawyers' Court

- (1) The members of the Higher Lawyers' Court who are Rechtsanwälte shall be appointed by the Regional Judicial Administration to serve for a term of four years.
- (2) The provisions in §§ 94 and 95 para. 1 shall apply accordingly as regards the appointment of Rechtsanwälte as members of the Higher Lawyers' Court and as regards the status of the members of this Court who are Rechtsanwälte. The members who are Rechtsanwälte may not simultaneously belong to the Lawyers' Disciplinary Court. The office of a member who is a Rechtsanwalt and who is appointed to sit as an honorary judge at a court of another instance shall end on such an appointment. Removal and dismissal from office shall be governed by § 95 paragraphs 2 and 3 on condition that the decision regarding removal from office is taken by a senate of the Higher Lawyers' Court to which the honorary judge does not belong.
- (3) In the cases set out in § 61 and § 100 para. 2 the number of members who are Rechtsanwälte should be in proportion with the number of members of the regional Bars. Rechtsanwälte

belonging to a joint Higher Lawyers' Court shall be appointed from the members of the Bars of the participating *Länder*, as set out in the agreement between the *Länder* (§ 100 para. 4).

- (4) Members who are *Rechtsanwälte* shall be paid compensation from the state treasury for the expenses incurred in rendering their services. This shall amount to one and a half times the maximum sum set out in § 28 para. 3 sentence 1 first half-sentence of the Federal Scale of Lawyers' Fees. In addition, members who are *Rechtsanwälte* shall have the right to be reimbursed for their travelling expenses and accommodation expenses, as set out in § 28 para.s 2 and 3 sentence 2 of the Federal Scale of Lawyers' Fees.

#### BRAO § 104 Composition of the senates of the Higher Lawyers' Court

The senates of the Higher Lawyers' Court shall decide on the appointment of their five members, including the Presiding Judge. Two further members who are *Rechtsanwälte* and two professional judges shall serve as associate judges.

#### BRAO § 105 Division of affairs and rules of procedure

- (1) The rules set out in Part Two and § 70 para. 1 of the Court Constitution Act (*Gerichtsverfassungsgesetz*) shall apply accordingly regarding the division of affairs at the Higher Lawyers' Court.
- (2) The management of affairs shall be regulated by rules of procedure which shall be determined by the members of the Higher Lawyers' Court; they must be endorsed by the Regional Judicial Administration.

### Part three The Federal Supreme Court in matters concerning the legal profession

#### BRAO § 106 Composition of the Senate for Matters concerning the Legal Profession

- (1) For matters referred to the Federal Supreme Court under this Act a Senate for Matters concerning the Legal Profession shall be formed at the Federal Supreme Court. In as far as the proceedings are governed accordingly by the provisions of the Act concerning Matters of Voluntary Jurisdiction (*Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit*) the Senate shall be a civil senate and in as far as the proceedings are governed accordingly by the provisions of the Code of Criminal Procedure it shall be a punitive senate in the meaning of § 132 of the Court Constitution Act.
- (2) The Senate shall consist of the President of the Federal Supreme Court and also three members of the Federal Supreme Court and three *Rechtsanwälte* as associate judges. The presiding judge shall be the President of the Federal Supreme Court or, as his/her deputy, a presiding judge selected by the Presidency of the Federal Supreme Court.

#### BRAO § 107 *Rechtsanwälte* as associate judges.

- (1) The associate judges who are *Rechtsanwälte* shall be appointed by the Federal Ministry of Justice to serve for a term of four years. They may be re-appointed after the their term of office has come to an end.
- (2) The associate judges who are *Rechtsanwälte* shall be appointed from a list of proposed candidates which the Presidency of The German Federal Bar submits to the Federal Ministry of Justice on the basis of proposals from the regional Bars. § 94 para. 2 sentence 3 shall apply in addition. The list of proposed candidates should at least contain twice the number of *Rechtsanwälte*.

- (3) If an associate judge who is a Rechtsanwalt should prematurely retire from office, a successor shall be appointed for the retiring associate judge's remaining term of office.
- (4)

#### BRAO § 108 Preconditions for appointment as an associate judge and the right to refuse appointment

- (1) Only a Rechtsanwalt who is eligible for election to the Council of the Bar may be appointed as an associate judge. (§§ 65, 66).
- (2) Associate judges may not at the same time belong to the Council of the Bar, the Lawyers' Disciplinary Court or the Higher Lawyers' Court nor may they serve full time or part time at the Bar.
- (3) The office of associate judge may be refused for the reasons set out in § 67.

#### BRAO § 109 Removal from the office of an associate judge

- (1) On the application of the Federal Ministry of Justice a Rechtsanwalt shall be removed from the office of associate judge
  1. if it subsequently becomes known that this person was not eligible for appointment as an associate judge,
  2. if a circumstance subsequently occurs which stands in the way of an appointment as an associate judge;
  3. if a Rechtsanwalt is in gross breach of his/her official duties as an associate judge.
- (2) A civil senate of the Federal Supreme Court shall take a decision concerning the application. The members of the Senate for Matters concerning the Legal Profession shall not be party to the decision.
- (3) The Rechtsanwalt must be given a hearing before the decision is taken.

#### BRAO § 110 The status of Rechtsanwälte as associate judges and the duty of confidentiality

- (1) Rechtsanwälte shall serve as judges in an honorary capacity. They shall have the status of professional judges in the sessions to which they are called as associate judges.
- (2) Rechtsanwälte shall not disclose any matters that become known to them when serving as associate judges. § 76 shall apply accordingly. The President of the Federal Supreme Court shall grant permission to testify.

#### BRAO § 111 Sequence for participation in sessions

Rechtsanwälte who are appointed as associate judges shall be called to the individual sessions in the sequence shown in a list prepared by the Presiding Judge of the Senate before the commencement of the business year. The opinion of the two most senior Rechtsanwälte appointed as associate judges must be heard before this list is prepared.

#### BRAO § 112 Compensation for associate judges who are Rechtsanwälte

§ 103 para. 4 shall apply accordingly to compensation for the expenses of associate judges who are Rechtsanwälte and to the reimbursement of their travelling expenses.

## Part six Sanctions for breaches of duty imposed by the Lawyers' Disciplinary Court

#### BRAO § 113 Sanctions for breaches of duty

- (1) The Lawyers' Disciplinary Court shall impose sanctions on a Rechtsanwalt who is in negligent breach of the duties under this Act or set out in the professional code of conduct.
- (2) Conduct on the part of a Rechtsanwalt outside his/her field of professional duties which represents an unlawful act or an act likely to incur a fine shall be considered a breach of duty subject to sanctions by the Lawyers' Disciplinary Court if, in the circumstances of the individual case, it is particularly likely to undermine the respect and trust of persons seeking access to justice in a way that is significant for a Rechtsanwalt's professional practice.
- (3) The Lawyers' Disciplinary Court may not impose sanctions if the Rechtsanwalt in question was not subject to the jurisdiction of the Lawyers' Disciplinary Court at the time of the act.

#### BRAO § 114 Sanctions that may be imposed by a Lawyers' Disciplinary Court

- (1) Sanctions that may be imposed by a Lawyers' Disciplinary Court are
  1. a warning,
  2. a caution,
  3. a fine of up to twenty-five thousand euro,
  4. a ban on acting as representative and counsel in certain fields of law for a period of between one and five years,
  5. exclusion from the legal profession.
- (2) A caution and a fine may be imposed in conjunction.

#### BRAO § 114a Effects of a ban on acting as representative, contraventions

- (1) A Rechtsanwalt who has been banned from acting as representative (§ 114 para. 1 no. 4) may not act as representative and counsel in the particular field of law in question, neither in person or in written communications, neither before a court, before authorities, before an arbitral tribunal nor vis-à-vis other persons. Nor may such a Rechtsanwalt grant powers of attorney or delegate powers of attorney. However such a Rechtsanwalt may defend the interests of his/her spouse or life partner and his/her underage children in as representation by a Rechtsanwalt is not imperative.
- (2) The validity of a legal act of the Rechtsanwalt shall not be affected by the ban on acting as representative. The same applies to legal acts which are carried out vis-à-vis the Rechtsanwalt.
- (3) A Rechtsanwalt who knowingly acts in contravention of a ban on acting as representative shall be immediately excluded from the legal profession in as far as the Lawyers' Disciplinary Court is not of the opinion that a less harsh measure would be adequate due to particular circumstances. Courts or authorities shall refuse to hear a Rechtsanwalt who appears before them in contravention of a ban on acting as representative.

#### BRAO § 115 The limitation period for imposing sanctions for a breach of duty

The possibility of imposing sanctions for a breach of duty which does not justify a sanction under § 114 para. 1 nos. 4 or 5 shall become statute-barred in five years. § 78 para. 1, § 78a sentence 1 and §§ 78b and 78c para.s 1 to 4 of the Criminal Code shall apply accordingly.

#### BRAO § 115a Reprimand and sanctions imposed by a Lawyers' Disciplinary Court

- (1) The institution of proceedings against a Rechtsanwalt before a Lawyers' Disciplinary Court shall not be obstructed on the grounds that the Council of the Bar has already reprimanded the Rechtsanwalt for the same conduct (§ 74). If the Lawyers' Disciplinary Court has overruled the notice of reprimand (§ 74a) because it has not found any negligent breach of duty, proceedings before the Lawyers' Disciplinary Court may only be instituted on grounds of the same conduct if there are facts and evidence that were not known to the Lawyers' Disciplinary Court at the time that such a decision was taken.
- (2) The reprimand shall become invalid when the judgment of the Lawyers' Disciplinary Court that is pronounced against the Rechtsanwalt on grounds of the same conduct becomes final and the Rechtsanwalt is acquitted or a sanction is imposed. The reprimand shall also become invalid if the

opening of the main proceedings has been finally rejected because no negligent breach of duty was found.

#### BRAO § 115b Sanctions imposed elsewhere

If a punishment, a disciplinary sanction, a sanction imposed by a disciplinary court for a profession or a disciplinary action has been imposed by a court or an authority, no proceedings shall be instituted before a Lawyers' Disciplinary Court on grounds of the same conduct as long as no additional sanctions are necessary from the Lawyers' Disciplinary Court in order to compel the Rechtsanwalt to perform his/her duties and to protect the standing of the legal profession. A punishment or a sanction imposed elsewhere shall not stand in the way of a sanction being imposed under § 114 para. 1 nos. 4 or 5.

#### BRAO § 115c Rules for managing directors of Rechtsanwaltsgesellschaften

The rules in Chapters Six and Seven, §§ 195 to 199 and the rules set out in the Chapter Eleven shall apply accordingly to persons who belong to a Bar in accordance with § 60 para. 1 sentence 2. Instead of being excluded from the legal profession, the person concerned shall be denied recognition as a suitable person to head a Rechtsanwaltsgesellschaft and to manage its business.

## Chapter seven Rules of procedure for a Lawyers' Disciplinary Court

### Part one General

#### BRAO § 116 Rules of procedure

The following rules of procedure shall apply to a Lawyers' Disciplinary Court. The Court Constitution Act and the Code of Criminal Procedure shall also apply *mutatis mutandis*.

#### BRAO § 117 Protection from arrest

A Rechtsanwalt may not be provisionally detained or arrested nor brought before court in order for disciplinary proceedings to be conducted. A Rechtsanwalt may not be sent to a psychiatric hospital in order for a report to be prepared on his/her state of mental health.

#### BRAO § 117a Defence

§ 140 para. 1 nos. 1 to 3, 6 and 7 of the Code of Criminal Procedure shall not apply to the defence of a Rechtsanwalt in proceedings before a Lawyers' Disciplinary Court.

#### BRAO § 117b Inspection of files

The Council of the Bar and a Rechtsanwalt who is accused of a breach of duty shall have the right to inspect the files that have been submitted to the court or which would have to be submitted if a writ of accusation were to be filed. They may also view any pieces of evidence kept by the authorities. § 147 para.s 2, 3, 5 and 6 of the Code of Criminal Procedure shall apply accordingly regarding the inspection of the files by the Rechtsanwalt.

#### BRAO § 118 Relationship between proceedings before a Lawyers' Disciplinary Court and criminal proceedings or proceedings for the imposition of a fine

- (1) If criminal proceedings before a public court are instituted against a Rechtsanwalt who has been accused of a breach of duty, proceedings before a Lawyers' Disciplinary Court may still be instituted against this Rechtsanwalt on grounds of the same conduct, but they must be suspended until the conclusion of the criminal proceedings. If proceedings before a Lawyers' Disciplinary Court have already been commenced they must be suspended if criminal proceedings are instituted during the course of these proceedings. Proceedings before a Lawyers' Disciplinary Court shall be continued if it seems certain that the matter can be clarified so that no contradictory decisions are likely or if no hearing can be held in the criminal proceedings for personal reasons concerning the Rechtsanwalt.
- (2) If the Rechtsanwalt is acquitted of a criminal offence or a breach of administrative rules in court proceedings, proceedings before a Lawyers' Disciplinary Court may only be instituted or continued on the basis of the same facts underlying the court decision, if these facts mean a breach of duty on the part of the Rechtsanwalt concerned, without there being sufficient evidence to convict the Rechtsanwalt of a criminal offence or to impose a fine
- (3) The Lawyers' Disciplinary Court shall be bound by the actual findings underlying the judgment in the criminal proceedings or in the proceedings for the imposition of a fine. However such findings may be reviewed in the proceedings before the Lawyers' Disciplinary Court if a majority of the court's members have doubts concerning their accuracy; this must be stated in the reasons given for the decision taken by the Lawyers' Disciplinary Court.
- (4) If proceedings before a Lawyers' Disciplinary Court are continued in accordance with para. 1 sentence 3, it shall also be permissible to re-open proceedings in which a final decision has been taken if the actual findings on which the conviction or the acquittal was based contradict the findings in the criminal proceedings. The petition to re-open the proceedings may be filed by the Public Prosecutor's office or by the Rechtsanwalt within one month of the judgment in the criminal proceedings becoming final.

#### BRAO § 118a Relationship between proceedings before a Lawyers' Disciplinary Court and proceedings before other disciplinary courts for professions

- (1) If a Rechtsanwalt is also subject to the jurisdiction of another court in a disciplinary action, a matter of honour or a matter of professional ethics involving a different profession, it shall be the Lawyers' Disciplinary Court that shall take the decision regarding a breach of duty unless the breach of duty has primarily been committed in practising a different profession. This does not apply to disbarment or exclusion from the other profession.
- (2) If the Public Prosecutor's office intends to institute proceedings against such a Rechtsanwalt before a Lawyers' Disciplinary Court, it shall notify this to the Public Prosecutor's office or to the authority that would be responsible for instituting proceeding against the Rechtsanwalt as a member of the other profession. If the Public Prosecutor's office or initiating authority that is responsible for the other profession intends to institute proceedings against the Rechtsanwalt, it shall notify this to the Public Prosecutor's office that would be responsible for instituting proceedings against the Rechtsanwalt before a Lawyers' Disciplinary Court (§§ 120, 163 sentence 3).
- (3) If a court in a disciplinary matter, a matter concerning a matter of honour or of professional ethics has already declared with final effect that it has or does not have jurisdiction to take a decision regarding the breach of duty by a Rechtsanwalt who may simultaneously be subject to the jurisdiction of another court in a disciplinary matter, a matter of honour or a matter of professional ethics, the other courts shall be bound by this decision.
- (4) Para.s 1 to 3 do not apply to Rechtsanwälte in public service who are not allowed to practise as a Rechtsanwalt (§ 47).
- (5) This shall have no bearing on § 110 of the Federal Notary Code (*Bundesnotarordnung*).

#### BRAO § 118b Suspension of proceedings before a Lawyers' Disciplinary Court

Proceedings before a Lawyers' Disciplinary Court may be suspended if a decision has to be taken in other statutory proceedings regarding a question whose assessment is of major significance for the decision in the proceedings before the Lawyers' Disciplinary Court.

## Proceedings in the first instance

### Part two

#### 1. General rules

##### BRAO § 119 Jurisdiction

- (1) In the first instance the court that shall have jurisdiction for the proceedings against a Rechtsanwalt shall be the Lawyers' Disciplinary Court.
- (2) The local jurisdiction of the Lawyers' Disciplinary Court shall be determined according to the seat of the Bar to which the Rechtsanwalt belongs when proceedings are instituted.

##### BRAO § 120 Involvement of the Public Prosecutor's office

The Public Prosecutor's office at the Higher Regional Court in whose district the Lawyers' Disciplinary Court has its seat (§ 119 para. 2) shall act as Public Prosecutor in the proceedings before the Lawyers' Disciplinary Court.

##### BRAO § 120a Mutual notification by the Public Prosecutor's office and the Bar

The Public Prosecutor's office and the Council of the Bar shall notify each other as soon as they become aware of any conduct on the part of a Rechtsanwalt which gives grounds to suspect a negligent breach of duty that may be penalised by sanctions imposed by a Lawyers' Disciplinary Court under § 114 para. 1 nos. 3 to 5.

#### 2. The institution of proceedings

##### BRAO § 121 Institution of proceedings before a Lawyers' Disciplinary Court

The proceedings before a Lawyers' Disciplinary Court shall be instituted by the Public Prosecutor's office submitting a writ of accusation to the Lawyers' Disciplinary Court.

##### BRAO § 122 Court decision regarding the institution of proceedings

- (1) If the Public Prosecutor's office does not comply with an application of the Council of the Bar to institute proceedings against a Rechtsanwalt before a Lawyers' Disciplinary Court or if it orders the proceedings to be closed, it shall notify its decision to the Council of the Bar, stating the reasons.
- (2) The Council of the Bar may petition the Higher Lawyers' Court for a ruling invalidating the notice of the Public Prosecutor's office within one month of its announcement. The petition must indicate the facts which allegedly justify the institution of proceedings before a Lawyers' Disciplinary Court and evidence must be provided.
- (3) If the Public Prosecutor's office takes no decision under para. 1 within one month of the petition of the Council of the Bar to institute proceedings against a Rechtsanwalt before a Lawyers' Disciplinary Court and if it does not file a writ of accusation within this period of time, it shall give the Council of the Bar the opportunity to give its opinion. If the Council of the Bar has indicated within three weeks that it considers it necessary and possible to expedite the conclusion of the investigations, stating the reasons, and if the Public Prosecutor's office takes none of the decisions set out sentence 1 within a further two months, the Council of the Bar may petition the Higher Lawyers' Court for a ruling concerning the institution of proceedings before a Lawyers' Disciplinary Court. Para. 2 sentence 2 shall apply. The petition shall only be admissible if there is



a suspicion of such a serious breach of duty that the imposition of the sanctions set out in § 114 para. 1 nos. 3 to 5 comes into consideration.

- (4) The proceedings before the Higher Lawyers' Court shall be governed by §§ 173 to 175 of the Code of Criminal Procedure in corresponding application.
- (5) § 172 of the Code of Criminal Procedure is not applicable.

#### BRAO § 123 Petition by a Rechtsanwalt for the institution of proceedings before a Lawyers' Disciplinary Court

- (1) A Rechtsanwalt may petition the Public Prosecutor's office for proceedings to be brought against him/her before a Lawyers' Disciplinary Court so that the Rechtsanwalt may clear his/her reputation of the suspicion of having committed a breach of duty. A Rechtsanwalt may not make such a petition on grounds of behaviour for which a fine has been threatened or set (§ 57) or for which he/she has received a reprimand from the Council of the Bar (§ 74).
- (2) If the Public Prosecutor's office does not grant the Rechtsanwalt's petition or if it orders the proceedings to be closed, it shall notify its decision to the Rechtsanwalt, stating the reasons. If the reasons show that a negligent breach of duty has been found, but no proceedings are instituted before a Lawyers' Disciplinary Court or if it is left open whether there has been a negligent breach of duty, the Rechtsanwalt may petition the Higher Lawyers' Court for a ruling. The petition must be filed within one month of the announcement of the decision taken by the Public Prosecutor's office.
- (3) § 173 para.s 1 and 3 of the Code of Criminal Procedure shall apply accordingly in the proceedings before the Higher Lawyers' Court. The Higher Lawyers' Court shall pronounce a ruling determining whether the Rechtsanwalt has committed a negligent breach of duty. Reasons must be given for the decision. If the Higher Lawyers' Court considers that there is sufficient evidence of a breach of duty which is punishable by sanctions from a Lawyers' Disciplinary Court, it shall order that proceedings shall be instituted before a Lawyers' Disciplinary Court. The Public Prosecutor's office shall be responsible for enforcing this decision.
- (4) If the Higher Lawyers' Court does not consider that there has been a negligent breach of duty, a petition for the institution of proceedings before a Lawyers' Disciplinary Court may only be made or a reprimand may only be issued by the Council of the Bar on grounds of the same behaviour if new facts or evidence come to light.

#### BRAO §§ 124 - 129

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#### BRAO § 130 Contents of the writ of accusation

The writ of accusation (§ 121 of this Act and § 207 para. 3 of the Code of Criminal Procedure) must indicate the breach of duty of which the Rechtsanwalt is accused stating the substantiating facts (the charge). Furthermore the evidence must be indicated if evidence is to be adduced in the main proceedings. The writ of accusation shall contain the petition to open the main proceedings before the Lawyers' Disciplinary Court.

#### BRAO § 131 Decision regarding the opening of the main proceedings before the Lawyers' Disciplinary Court

- (1) In the ruling opening the main proceedings, the Lawyers' Disciplinary Court shall admit the charge to the main proceedings.
- (2) The Rechtsanwalt may not challenge the ruling opening the main proceedings.
- (3) A ruling rejecting the opening of the main proceedings must be substantiated. The Public Prosecutor's office shall have the right to file an immediate appeal against such a ruling.

#### BRAO § 132 Legal effect of a negative ruling

If a non-appealable ruling has been made rejecting the opening of the main proceedings, the petition for the institution of proceedings before a Lawyers' Disciplinary Court may only be resubmitted if new facts and evidence come to light. This may only be done within five years of the ruling becoming final.

#### BRAO § 133 Service of the ruling opening the main proceedings

The ruling concerning the opening of the main proceedings must be served on the Rechtsanwalt by no later than the time that he/she receives the summons. In the cases set out in § 207 para. 3 of the Code of Criminal Procedure the same shall apply regarding the subsequently submitted writ of accusation.

### 3. The main proceedings before the Lawyers' Disciplinary Court

#### BRAO § 134 Main proceedings notwithstanding the absence of the Rechtsanwalt

The main proceedings may be conducted in a Rechtsanwalt's absence if the Rechtsanwalt has been properly summoned and it was pointed out in the summons that the proceedings may proceed in the Rechtsanwalt's absence. A public summons is not permissible.

#### BRAO § 135 Main proceedings in camera

- (1) The main proceedings before the Lawyers' Disciplinary Court shall be held in camera. On the petition of the Public Prosecutor's office the proceedings may be held in public; on the petition of the Rechtsanwalt they must be held in public; in this case the provisions of the Court Constitution Act (*Gerichtsverfassungsgesetz*) concerning the public shall apply mutatis mutandis.
- (2) Representatives of the Regional Judicial Administration, the President of the Higher Regional Court or his/her deputy, the civil servants of the Public Prosecutor's office at the Higher Regional Court and the Rechtsanwälte of the Bar shall be admitted to proceedings held in camera. The Lawyers' Disciplinary Court may also admit other persons as observers after seeking the opinion of the parties involved.

#### BRAO § 136

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#### BRAO § 137 Taking of evidence by an instructed or requested judge

The Lawyers' Disciplinary Court may instruct one of its members to interrogate witnesses or experts. It may also request another Lawyers' Disciplinary Court or the Local Court to conduct the interrogation. However on the petition of the Public Prosecutor's office or of the Rechtsanwalt the witness or the expert must be interrogated in the main proceedings unless the person concerned is likely to be unable to attend the main proceedings or cannot be reasonably expected to do so because the distance is too great.

#### BRAO § 138 The reading out of statements

- (1) The Lawyers' Disciplinary Court shall decide in due assessment of the circumstances whether to read out the statement of a witness or an expert who has already been interrogated in proceedings before the Lawyers' Disciplinary Court or in other proceedings prescribed by law.
- (2) Before the court takes a decision the Public Prosecutor or the Rechtsanwalt may make a petition for the witness or the expert to be interrogated in the main proceedings. Such a petition must be granted unless the witness or the expert is likely to be unable to attend the main proceedings or if the person concerned cannot reasonably be expected to attend because the distance is too great. If the petition is granted, the records concerning the earlier interrogation will not be read out.
- (3) If a witness or an expert has been interrogated by an instructed or requested judge (§ 137), no objection may be made to the recorded statements being read out. However the Public Prosecutor or the Rechtsanwalt may object to these statements being read out if a petition in accordance with § 137 sentence 3 has been rejected and there are no longer any grounds for such a rejection.

#### BRAO § 139 Decision of the Lawyers' Disciplinary Court

- (1) The main proceedings shall conclude with the pronouncement of the judgment following the hearing.
- (2) The judgment shall pronounce an acquittal, a conviction or an announcement that the proceedings have been closed.
- (3) With the exception of the case set out in § 260 para. 3, the hearing before the Lawyers' Disciplinary Court shall be closed,
  1. if the Rechtsanwalt's admission to the legal profession has expired or been withdrawn or revoked (§§ 13 to 16);
  2. if there is no case to answer before a Lawyers' Disciplinary Court under § 115b.

#### BRAO § 140 Court recorder

- (1) In the main proceedings before the Lawyers' Disciplinary Court the duties of the court recorder shall be performed by a Rechtsanwalt. The court recorder shall be appointed by the Presiding Judge or, in the case of a Lawyers' Disciplinary Court with several divisions, by the Managing Presiding Judge. The court recorder has a duty to accept such an appointment.
- (2) Before the court recorder serves for the first time, the Presiding Judge of the division of the Lawyers' Disciplinary Court shall, through a handshake, make the person concerned undertake to conscientiously perform the duties of a court recorder.
- (3) The court recorder must treat all matters that come to his/her knowledge in performing his/her duties as completely confidential and must not disclose them to anyone. § 76 shall apply accordingly. Approval to make a statement shall be granted by the Presiding Judge of the division of the Lawyers' Disciplinary Court.

#### BRAO § 141 Copies of the decisions

Copies and excerpts from the decisions of the Lawyers' Disciplinary Court shall be issued by the Presiding Judge of the division.

### Part three Appeals to higher courts

#### 1. Appeals to higher courts challenging decisions of the Lawyers' Disciplinary Court

##### BRAO § 142 Appeals (Beschwerde)

In as far as decisions of the Lawyers' Disciplinary Court may be challenged by means of an appeal (Beschwerde) the Higher Lawyers' Court shall have jurisdiction to hear such an appeal and take a decision.

##### BRAO § 143 Appeals on questions of facts and law (Berufung)

- (1) An appeal on questions of fact and law (Berufung) challenging a judgment of a Lawyers' Disciplinary Court may be made to the Higher Lawyers' Court.
- (2) The appeal must be filed before the Lawyers' Disciplinary Court within one week of the announcement of the judgment. If the judgment has not been pronounced in the Rechtsanwalt's presence, the set term for the Rechtsanwalt shall start to run on the date of service.
- (3) The appeal may only be substantiated in writing.

- (4) The proceedings shall be governed by the rules set out in the Code of Criminal Procedure concerning appeals on questions of fact and law. §§ 134, 135, 137 to 139 of this Act shall also apply *mutatis mutandis*. If a Rechtsanwalt has filed such an appeal and is absent from the main proceedings, § 329 para. 1 sentences 1 and 2 and para. 3 of the Code of Criminal Procedure shall apply accordingly if the Rechtsanwalt has been properly summoned and the legal consequences of his/her absence have been pointed out in the summons; this shall not be the case if the Rechtsanwalt has been summoned by public announcement.

#### BRAO § 144 Involvement of the Public Prosecutor's office in proceedings before the Higher Lawyers' Court

The duties of Public Prosecutor in proceedings before the Higher Lawyers' Court shall be performed by the Public Prosecutor's office at the Higher Regional Court or the highest Regional Court where the Higher Lawyers' Court is established.

## 2. Appeals to higher courts challenging judgments of the Higher Lawyers' Court

#### BRAO § 145 Appeals on questions of law (Revision)

- (1) It is permissible to file an appeal on a question of law (Revision) to the Federal Supreme Court challenging a judgment of the Higher Lawyers' Court,
1. if the judgment imposes a sanction as defined in § 114 para. 1 no. 4 or 5;
  2. if the Higher Lawyers' Court, contrary to a petition from the Public Prosecutor's office, has not taken a judicial decision concerning a sanction as defined in § 114 para. 1 no. 4 or 5;
  3. if the Higher Lawyers' Court has allowed such an appeal in its judgment.
- (2) The Higher Lawyers' Court may only allow an appeal on a question of law if it has taken a decision concerning questions of law or questions in relation to a Rechtsanwalt's professional duties which are of fundamental importance.
- (3) The non-admissibility of an appeal on a question of law may be independently challenged by means of an appeal (Beschwerde) within one month of the judgment having been served. This appeal must be filed before the Higher Lawyers' Court. The statement of appeal must expressly state the fundamental question of law.
- (4) The appeal (Beschwerde) shall suspend the judgment so that it does not become final.
- (5) If no redress is granted, the Federal Supreme Court shall take a decision by making a ruling. No reasons must be given for the ruling if the appeal has been unanimously rejected or dismissed. If the appeal is rejected by the Federal Supreme Court, the judgment shall become final. If the appeal is granted, the time limit for lodging the appeal on a question of law shall start to run on the service of the notice of appeal.

#### BRAO § 146 Lodging an appeal on a question of law and procedure

- (1) The appeal on a question of law must be submitted in writing to the Higher Lawyers' Court within one week. The set term shall start to run on the pronouncement of the judgment. If the judgment has not been pronounced in the presence of the Rechtsanwalt, the set term shall start to run for the Rechtsanwalt on the service of the judgment.
- (2) The Rechtsanwalt may only submit written appeals on questions of law and written statements of the reasons for the appeal.
- (3) In addition to the provisions of the Code of Criminal Procedure concerning appeals on questions of law, §§ 135 and 139 para. 3 of this Act shall apply accordingly to the proceedings before the Federal Supreme Court. In the cases set out in § 354 para. 2 of the Code of Criminal Procedure the matter may also be referred back to the Higher Lawyers' Court of a different *Land*.

#### BRAO § 147 Involvement of the Public Prosecutor's office before the Federal Supreme Court

The duties of Public Prosecutor in proceedings before the Federal Supreme Court shall be performed by the Federal Public Prosecutor.

## Part four The securing of evidence

### BRAO § 148 Order for the securing of evidence

- (1) If disciplinary proceedings against a Rechtsanwalt are closed because the Rechtsanwalt's admission to the legal profession has expired or has been withdrawn, the decision, on the petition of the Public Prosecutor's office, may order the securing of evidence if it is likely that the Rechtsanwalt would have been excluded from the legal profession. This order may not be challenged.
- (2) The evidence shall be taken by the Lawyers' Disciplinary Court. The Lawyers' Disciplinary Court may entrust the taking of evidence to one of its members.

### BRAO § 149 Proceedings

- (1) The Lawyers' Disciplinary Court shall ex officio take all evidence which may elucidate whether the proceedings which have been closed would have led to the Rechtsanwalt being excluded from the legal profession. The scope of the proceedings shall be determined by the Lawyers' Disciplinary Court in due assessment of the circumstances, without it being bound by petitions; in this respect its orders may not be challenged.
- (2) Witnesses shall be questioned under oath in as far as no exceptions are prescribed or permitted.
- (3) The Public Prosecutor's office and the former Rechtsanwalt shall be party to the proceedings. The former Rechtsanwalt shall only have the right to be notified of the dates set for the securing of evidence if the former Rechtsanwalt is in a member state of the European Union or a state that is party to the Treaty Establishing the European Community and has notified his/her address to the Lawyers' Disciplinary Court.
- (4) (repealed)

## Part five Ban on practising and acting as counsel as a provisional sanction

### BRAO § 150 Preconditions for a ban

- (1) If there are pressing grounds to believe that the court will order a Rechtsanwalt to be excluded from the legal profession, a provisional ban on practising and acting as counsel may be imposed on the Rechtsanwalt by way of a court order. § 118 para. 1 sentences 1 and 2 shall not apply.
- (2) The Public Prosecutor's office may file a petition for a ban on practising or acting as counsel before the institution of proceedings before the Lawyers' Disciplinary Court. The petition must indicate what breach of duty the Rechtsanwalt is being accused of and provide details of the evidence.
- (3) The court that shall have jurisdiction for the hearing and the decision shall be the court that takes a decision regarding the opening of the main proceedings against the Rechtsanwalt or the court before which disciplinary proceedings are pending.

### BRAO § 150a Proceedings to enforce a petition of a Public Prosecutor's office

If the Council of the Bar has made an application to the Public Prosecutor's office to file a petition for the imposition of a ban on practising or acting as counsel, § 122 shall apply accordingly. However the time limit referred to in § 122 para. 3 sentence 1 shall be two weeks and the time limit referred to in § 122 para. 3 sentence 2 for further activities on the part of the Public Prosecutor's office shall be one month.

### BRAO § 151 The oral hearing

- (1) The ruling imposing a ban on practising or acting as counsel may only be made on the basis of an oral hearing.

- (2) The rules that are authoritative for the main proceedings before the court of decision shall apply accordingly to the summons and the oral hearing in as far as nothing to the contrary is set out in the provisions below.
- (3) In the first summons the breach of duty of which the Rechtsanwalt is being accused shall be indicated by stating the substantiating facts; furthermore evidence must be adduced. However this shall not be necessary if the Rechtsanwalt has already been notified of the writ of accusation.
- (4) The scope of the evidence shall be determined by the court in due assessment of the circumstances, without it being bound by petitions of the Public Prosecutor's office or of the Rechtsanwalt.

#### BRAO § 152 Voting on the ban

A majority of two thirds of the votes shall be necessary in order to impose a ban on practising or acting as counsel.

#### BRAO § 153 Ban following the main proceedings

If the court has taken a decision to exclude a Rechtsanwalt from the legal profession, it may confer and take a decision immediately after the main proceedings concerning the imposition of a ban against practising or acting as counsel. This shall also be the case if the Rechtsanwalt was absent from the main proceedings.

#### BRAO § 154 Service of the ruling

Reasons must be given for the ruling. It must be served on the Rechtsanwalt. If the Rechtsanwalt was absent when the ruling was pronounced, a copy of the ruling, without reasons, must also be served on the Rechtsanwalt immediately after the ruling has been pronounced.

#### BRAO § 155 Effects of the ban

- (1) The ruling shall come into effect on its pronouncement.
- (2) A Rechtsanwalt who has been banned from practising may not practise his/her profession.
- (3) A Rechtsanwalt who has been banned from acting as counsel (§ 150 para. 1) may not act as representative and counsel, neither in person nor in written communications, neither before a court, before the authorities, before an arbitral tribunal nor vis-à-vis any other persons. Such a Rechtsanwalt may not grant powers of attorney or delegate such powers.
- (4) However a Rechtsanwalt who has been banned from practising or acting as counsel may represent his/her own interests, the interests of his/her spouse or life partner and his/her underage children in as far as representation by a Rechtsanwalt is not imperative.
- (5) The validity of the Rechtsanwalt's legal acts shall not be affected by a ban against practising or acting as counsel. The same applies to legal acts which are performed vis-à-vis the Rechtsanwalt.

#### BRAO § 156 Acts in contravention of a ban

- (1) A Rechtsanwalt who knowingly acts in contravention of a ban against practising or acting as counsel shall be excluded from the legal profession, unless a milder sanction imposed by the Lawyers' Disciplinary Court seems adequate due to particular circumstances.
- (2) Courts or authorities shall refuse to hear a Rechtsanwalt who appears before them in contravention of a ban against practising or acting as counsel.

#### BRAO § 157 Appeal (Beschwerde)

- (1) It shall be permissible to file an immediate appeal against a ruling of the Lawyers' Disciplinary Court or the Higher Lawyers' Court imposing a ban on practising or acting as counsel. The appeal shall have no suspensive effect.

- (2) The Public Prosecutor's office shall have a right of immediate appeal against a ruling from the Lawyers' Disciplinary Court or the Higher Lawyers' Court refusing to impose a ban against practising or acting as counsel.
- (3) The decision concerning the immediate appeal shall be taken by the Lawyers' Disciplinary Court in as far as the ruling that is being challenged was pronounced by the Lawyers' Disciplinary Court. In as far as this ruling was pronounced by the Higher Lawyers' Court the decision concerning the appeal shall be taken by the Federal Supreme Court. In addition to the provisions of the Code of Criminal Procedure regarding appeals, the proceedings shall be governed by § 151 para. 1, 2 and 4 and §§ 152 und 154 of this Act in corresponding application.

#### BRAO § 158 Lifting of the ban

The ban against practising or acting as counsel shall be lifted,

1. if a judgment is pronounced to the effect that the Rechtsanwalt is not to be excluded from the legal profession;
2. if the opening of the main proceedings before the Lawyers' Disciplinary Court is refused.

#### BRAO § 159 Quashing of the ban

- (1) The ban on practising or acting as counsel shall be quashed if it transpires that the preconditions for its imposition have not been met or are no longer met.
- (2) The court that has jurisdiction to quash the ban shall be the court indicated in § 150 para. 3.
- (3) If the Rechtsanwalt files a petition for the ban to be quashed, a new oral hearing may be ordered. The petition cannot be filed as long as no decision has been taken regarding an immediate appeal by the Rechtsanwalt under § 157 para. 1. No appeal shall be permissible against an order dismissing the petition.

#### BRAO § 159a Three-month time limit

- (1) As long as proceedings before the Lawyers' Disciplinary Court have not yet been instituted, a ban against practising or acting as counsel may only be upheld for longer than three months if the particular difficulty or scope of the investigations or another important reason do not yet allow proceedings to be instituted before the Lawyers' Disciplinary Court and justify the continuation of the ban.
- (2) In the cases set out in para. 1 the ban shall be quashed after the three months if the Higher Lawyers' Court does not order the ban to be continued.
- (3) If the files are submitted to the Higher Lawyers' Court before the expiry of the time limit set out in para. 2, the set term shall be interrupted until the court has reached a decision.

#### BRAO § 159b Review of the continuation of the ban

- (1) In the cases set out in § 159a the Lawyers' Disciplinary Court, through the mediation of the Public Prosecutor's office, shall submit the files to the Higher Lawyers' Court in order for a decision to be taken if the court considers it necessary for the ban to be continued or the Public Prosecutor's office has filed a petition for its continuation.
- (2) The Rechtsanwalt must be given a hearing before the decision is taken by the Higher Lawyers' Court.
- (3) The Higher Lawyers' Court must review the continuation of the ban by no later than three months, as long as disciplinary proceedings have not yet been instituted.

#### BRAO § 160 Notification of the ban

- (1) The ruling imposing a ban on practising or acting as counsel shall be promptly notified to the Regional Judicial Administration and the President of the Bar in the form of a certified copy.
- (2) Furthermore a certified copy of the wording of this ruling must be sent to the court where the Rechtsanwalt is admitted and to the Local Court in the locality where the Rechtsanwalt has his/her

place of residence. If the Rechtsanwalt also belongs to a Chamber of Notaries, a certified copy must also be sent to the Council of the Chamber of Notaries.

- (3) If the ban on practising or acting as counsel is no longer in force or if it is quashed or modified, para.s 1 and 2 shall apply accordingly.

#### BRAO § 161 Appointment of a representative

- (1) Should it be necessary to do so, the Regional Judicial Administration shall appoint a representative for a Rechtsanwalt against whom a ban on practising or acting as counsel has been imposed. Before the appointment is made, the opinion of the Council of the Bar must be sought and the Rechtsanwalt must be given a hearing. The Rechtsanwalt may suggest a suitable representative.
- (2) § 53 para. 4, para. 5 sentences 3 and 4, para.s 7 to 10 shall apply accordingly.  
(3) to (5)

#### BRAO § 161a Limited ban on acting as counsel

- (1) If there are pressing grounds to believe that a sanction will be imposed on a Rechtsanwalt under § 114 para. 1 no. 4, a ruling may be made imposing a provisional ban prohibiting the Rechtsanwalt from acting as representative and counsel in certain areas of law.
- (2) § 150 para. 1 sentence 2, para.s 2, 3, §§ 150a to 154, § 155 para. 1, 3 to 5, § 156 to 160 shall apply accordingly.

## Chapter eight The Bar at the Federal Supreme Court

### Part one General

#### BRAO § 162 Corresponding application of provisions

Chapters One to Seven of this Act shall apply to the members of the Bar at the Federal Supreme Court in as far as nothing in particular is set out in the following provisions.

#### BRAO § 163 The jurisdiction of the Federal Ministry of Justice and the Federal Supreme Court

In as far as duties are assigned to the Regional Department for Justice under Chapter One and Chapter Seven of this Act, the Federal Ministry of Justice shall stand in its stead. The Federal Supreme Court shall stand in lieu of the Higher Lawyers' Court and the Lawyers' Disciplinary Court. The Federal Public Prosecutor at the Federal Supreme Court shall perform the duties of the Public Prosecutor's office.

### Part two Admission as a Rechtsanwalt before the Federal Supreme Court

#### BRAO § 164 Special requirements for admission

Only a person who has been nominated by the Electoral Committee for Rechtsanwälte at the Federal Supreme Court may be admitted as a Rechtsanwalt before the Federal Supreme Court.

#### BRAO § 165 Electoral Committee for Rechtsanwälte at the Federal Supreme Court

- (1) The Electoral Committee shall consist of the President and the Senate President of the Civil Senates of the Federal Supreme Court and also of the members of the Presidency of The German Federal Bar and the Presidency of the Bar at the Federal Supreme Court.
- (2) The Electoral Committee shall be chaired by the President of the Federal Supreme Court. The President shall convene the Electoral Committee.



- (3) The invitation must include the agenda for the meeting of the Electoral Committee and be sent to the members at least one week prior to the meeting.
- (4) The meetings shall be held in camera.
- (5) Minutes shall be taken of each meeting.

#### BRAO § 166 List of proposed candidates for election

- (1) The election shall be held on the basis of lists of proposed candidates.
- (2) Lists of proposed candidates may be submitted by
  1. The German Federal Bar on the basis of proposals from the regional Bars,
  2. the Bar at the Federal Supreme Court.
- (3) The lists of proposed candidates may only include persons who have reached the age of thirty-five and who have been practising as Rechtsanwälte for an uninterrupted period of at least five years.

#### BRAO § 167 Review by the Electoral Committee

- (1) The Electoral Committee shall ascertain whether the person proposed has the qualifications and the personal qualities required in order to exercise rights of audience before the Federal Supreme Court.
- (2) To prepare the election the Electoral Committee shall appoint two of its members as reporters.

#### BRAO § 167a Inspection of files

- (1) A Rechtsanwalt who is included in the list of proposed candidates has the right to inspect the minutes of the Electoral Committee.
- (2) The personal, professional and financial circumstances of the Rechtsanwalt shall be the subject a special report which the Rechtsanwalt has the right to inspect.
- (3) § 58 para.s 2 and 3 shall apply accordingly.

#### BRAO § 168 Decision of the Electoral Committee

- (1) The Electoral Committee shall form a quorum if the majority of both the members of the Federal Supreme Court and the members of the Presidencies of The German Federal Bar and the Bar at the Federal Supreme Court are present. It shall take a decision through a simple majority of the votes cast. Voting shall be held by secret ballot.
- (2) From the list of proposed candidates the Electoral Committee shall nominate twice the number of Rechtsanwälte that its members consider to be qualified to exercise rights of audience before the Federal Supreme Court.
- (3) Nomination shall not give an applicant the right to be admitted before the Federal Supreme Court.

#### BRAO § 169 Notification of the results of the election

- (1) The Chairperson of the Electoral Committee shall notify the Federal Ministry of Justice of the results of the elections.
- (2) The applications of the Rechtsanwälte nominated by the Electoral Committee for admission before the Federal Supreme Court shall be attached to the notice.

#### BRAO § 170 Decision concerning the application for admission

- (1) The Federal Ministry of Justice shall take a decision regarding the application for admission before the Federal Supreme Court.
- (2) The decision concerning the application for admission may be stayed for one of the reasons set out in § 33 para. 2.
- (3) The opinion of the Council of the Bar at the Federal Supreme Court shall only be sought if reservations exist concerning admission.
- (4) § 166 para. 3 shall apply accordingly as regards admission.

## BRAO § 171 The exclusivity of rights of admission

A Rechtsanwalt at the Federal Supreme Court may not concurrently be admitted before another court.

## Part three The special rights and duties of Rechtsanwälte who are admitted before the Federal Supreme Court

### BRAO § 172 Restriction on appearing before other courts

- (1) Rechtsanwälte who have rights of audience before the Federal Supreme Court may only appear before the Federal Supreme Court, the other highest courts of the Federal Republic, the Joint Senate of the highest courts and before the Federal Constitutional Court. This shall not affect the right to appear before an international court or a common court for several countries.
- (2) In proceedings before a requested judge these Rechtsanwälte may also appear before other courts if the request comes from one of the courts mentioned in paragraph 1.

### BRAO § 172a Partnerships

Rechtsanwälte who have rights of audience before the Federal Supreme Court may only form a partnership amongst each other. Such a partnership may only comprise two Rechtsanwälte.

### BRAO § 173 Appointment of a deputy and a liquidator to wind up the law practice

- (1) If a Rechtsanwalt requires a deputy, as demanded in the cases set out in § 53 para. 1, and cannot find such a person himself/herself, the deputy shall be appointed by the Federal Ministry of Justice.
- (2) The deputy appointed by the Federal Ministry of Justice must be a Rechtsanwalt who has reached the age of thirty-five and who has been practising as a Rechtsanwalt for an uninterrupted period of at least five years.
- (3) Para. 2 shall apply accordingly as regards the appointment of a liquidator to wind up the law practice (§ 55). If the Bar proves to the Federal Supreme Court that provision has been made for dealing with ongoing cases in such a way that a person seeking access to justice is not placed in a worse position than he/she would have been in if applying § 55, no liquidator shall be appointed.

## Part four The Bar at the Federal Supreme Court

### BRAO § 174 Composition and Council

- (1) Rechtsanwälte who have rights of audience before the Federal Supreme Court shall form the Bar at the Federal Supreme Court.
- (2) The number of members on the Council shall be determined by the Bar's rules of procedure. § 63 para. 2 shall not apply.

## Chapter nine The German Federal Bar

### Part one General

#### BRAO § 175 Composition and seat of The German Federal Bar

- (1) The regional Bars shall amalgamate to form The German Federal Bar.
- (2) The seat of The German Federal Bar shall be determined through its by-laws.

#### BRAO § 176 Status of The German Federal Bar

- (1) The German Federal Bar is a public corporation.

- (2) The German Federal Bar shall be state-regulated by the Federal Ministry of Justice. Such regulation shall be limited to ensuring that the law and the by-laws are observed and in particular that the duties assigned to The German Federal Bar are performed.

#### BRAO § 177 The duties of The German Federal Bar

- (1) The German Federal Bar shall perform the duties assigned to it by law.
- (2) The German Federal Bar shall particularly have the following duties,
  1. to ascertain the opinions of the regional Bars and to discover the opinion of the majority through joint discussions, in as far as matters exist which concern all regional Bars;
  2. to set out guidelines for the welfare institutions of the regional Bars (§ 89 para. 2 no. 3);
  3. to put forward the opinion of The German Federal Bar to the courts and the authorities which have jurisdiction in all matters which concern all regional Bars;
  4. to represent all regional Bars vis-à-vis the authorities and organisations;
  5. to submit opinions which have been requested by an authority or corporation of the Federal Government that is involved in passing legislation or to submit reports that have been requested by a federal court;
  6. to further the continuing professional development of Rechtsanwälte;

#### BRAO § 178 Dues payable to The German Federal Bar

- (1) The German Federal Bar shall collect dues from the regional Bars for the purpose of meeting personal and material requirements.
- (2) The rates for such dues shall be set by the General Assembly.
- (3) The General Assembly may grant relief to regional Bars in less fortunate financial circumstances.

## Part two The constituent bodies of The German Federal Bar

### 1. The Presidency

#### BRAO § 179 Composition of the Presidency

- (1) The German Federal Bar shall have a Presidency.
- (2) The Presidency shall consist of
  1. the President,
  2. at least three Deputy Presidents,
  3. the Treasurer.
- (3) The Presidency shall adopt rules of procedure.
- (4) The General Assembly may nominate further Deputy Presidents for appointment.

#### BRAO § 180 Elections to the Presidency

- (1) The Presidency of The German Federal Bar shall be elected by the General Assembly from amongst its midst. A President who is a member of the Council of a regional Bar is eligible for re-election.
- (2) Further details shall be set out in the by-laws of The German Federal Bar.

#### BRAO § 181 Right to decline to serve if elected

Election to the Presidency may be declined if the person in question,

1. has reached the age of sixty-five;
2. has been a member of the Presidency for the last four years.

#### BRAO § 182 Term of office and premature retirement from office

- (1) The members of the Presidency shall be elected for a term of four years.
- (2) If a member prematurely retires from the Presidency a new member shall be appointed for the remainder of the former member's term of office.
- (3) A Rechtsanwalt shall prematurely retire as a member of the Presidency,
  1. if the Rechtsanwalt retires from the office of President of a regional Bar; the President of The German Federal Bar, however, shall only retire from this office if he/she is no longer a member of the Council of a regional Bar;
  2. if the Rechtsanwalt resigns from office.

The Rechtsanwalt must submit a written statement of resignation to the Presidency. The statement of resignation may not be revoked.

#### BRAO § 183 Serving on the Presidency in an honorary capacity

The members of the Presidency shall serve on a gratuitous basis. However they shall be paid reasonable compensation for the expenses incurred in rendering their services and reimbursement for travelling expenses.

#### BRAO § 184 Duty to maintain confidentiality

§ 76 shall apply accordingly regarding the duty of the members of the Presidency and the employees of The German Federal Bar to maintain confidentiality.

#### BRAO § 185 Duties of the President

- (1) The President shall represent the German Federal Bar both in and out of court.
- (2) The President shall arrange the business of The German Federal Bar and of the Presidency. The President shall execute the resolutions of the Presidency and of the General Assembly.
- (3) The President shall chair the meetings of the Presidency and of the General Assembly.
- (4) The President shall submit an annual report to the Federal Ministry of Justice regarding the activities of The German Federal Bar and of the Presidency. Furthermore the President shall notify the Federal Ministry of Justice of the results of elections to the Presidency.
- (5) The President may be assigned further tasks in the by-laws of The German Federal Bar.

#### BRAO § 186 Duties of the Treasurer

- (1) The Treasurer shall manage the assets of The German Federal Bar in accordance with the instructions of the President. The Treasurer shall have the right to receive monies.
- (2) The Treasurer shall provide an annual account to the General Assembly concerning receipts and expenditure and the management of the assets.

## 2. The General Assembly

#### BRAO § 187 The Assembly of the members

The German Federal Bar shall periodically take resolutions at its General Assembly.

#### BRAO § 188 Representatives of the regional Bars at the General Assembly.

- (1) The regional Bars shall be represented at the General Assembly by their Presidents.

- (2) The President of a regional Bar may be represented by another member of the Council.

#### BRAO § 189 Convocation of the General Assembly

- (1) The General Assembly shall be convened in writing by the President. The President must convene the General Assembly if at least three regional Bars apply for this in writing stating the subject matter to be discussed.
- (2) When the Assembly is convened, it shall be necessary to indicate the matter that is to form the subject of a resolution at the General Assembly.
- (3) The General Assembly shall be convened at least three weeks before the date on which it is to meet. The date on which the invitation is sent out and the date of the General Assembly shall not be included when calculating the three weeks.
- (4) In urgent cases the President may convene the General Assembly at shorter notice. The provision in para. 2 need not be observed.

#### BRAO § 190 Resolutions passed at the General Assembly

- (1) Each regional Bar shall have one vote.
- (2) The rules determining when the General Assembly shall form a quorum shall be set out in the by-laws.
- (3) The resolutions of the General Assembly shall be taken by a simple majority of the votes cast in as far as nothing to the contrary is set out in the by-laws. The same applies to the elections to be held by the General Assembly. If there is a parity of votes in an election, the election shall be decided through a draw.
- (4) The General Assembly may only pass resolutions which would impose a financial burden on the regional Bars if there is unanimity. However this shall not apply to the resolutions setting the dues of the regional Bars and the amount paid in compensation for expenses and reimbursement of travelling expenses for the members of the Presidency.
- (5) Minutes shall be taken of the resolutions of the General Assembly and the results of elections. They shall be signed by the Chairperson and by a Deputy President acting as Secretary.

### 3. The invalidity of elections and resolutions

#### BRAO § 191 Preconditions for invalidity and proceedings before the Federal Supreme Court

- (1) Elections or resolutions of the Presidency or the General Assembly may be declared invalid or null and void by the Federal Supreme Court at the petition of the Federal Ministry of Justice if they have been taken in breach of the law or of the by-laws or if their contents are inconsistent with the law or the by-laws.
- (2) The petition may also be made by a regional Bar, but in relation to a resolution only if the Bar's rights have been violated by such a resolution.
- (3) § 91 shall apply accordingly.

### 4. The Statutory Assembly

#### BRAO § 191a Establishment and duties

- (1) A Statutory Assembly shall be established at The German Federal Bar.
- (2) As by-laws the Statutory Assembly shall adopt a professional code of conduct for practising the profession of a Rechtsanwalt, giving due consideration to a Rechtsanwalt's professional duties and in observance of the provisions set out in § 59b.
- (3) The Statutory Assembly shall adopt rules of procedure.

- (4) The President of The German Federal Bar and the Presidents of the regional Bars shall be non-voting members of the Statutory Assembly; the members to be elected by the Assembly of Bar in accordance with § 191b shall have the right to vote.

#### BRAO § 191b Election of the voting members of the Statutory Assembly

- (1) The number of voting members of the Statutory Assembly shall be calculated according to the number of members of the regional Bars. For each 1,000 members, or a part thereof, one member shall be elected to the Statutory Assembly. The number of members on the first of January of a year in which elections are held shall be decisive.
- (2) The voting members of the Statutory Assembly shall be elected by the members of the regional Bars from the group of proposed members in a secret and direct election by postal ballot. The proposals for the election must be signed by at least ten members of the Bar. Proposals for election with regard to the members of the Bar at the Federal Supreme Court must be signed by at least three members. The applicants with the majority of votes shall be elected.
- (3) § 65 nos. 1 and 3, §§ 66, 67, 68 para. 1, § 69 para.s 1, 2 and 4, §§ 75, 76 shall apply accordingly. If a voting member retires from the Statutory Assembly, the member of the Bar who has not been voted in, but has the next highest number of votes shall join the Statutory Assembly.

#### BRAO § 191c Convocation and voting rights

- (1) The Statutory Assembly shall be convened in writing by the President of The German Federal Bar.
- (2) The President of The German Federal Bar must convene the Statutory Assembly if at least five regional Bars or a quarter of the members who have the right to vote at the Statutory Assembly apply for this in writing indicating the subject matter that is to be dealt with at the meeting of the Statutory Assembly.  
Further procedure shall be governed in corresponding application of § 189.

#### BRAO § 191d Chairing the meeting, passing resolutions

- (1) The Statutory Assembly shall be chaired by the President of The German Federal Bar. The Chairperson shall select a Secretary from the members of the Assembly.
- (2) The Statutory Assembly shall form a quorum if three fifths of its voting members are present.
- (3) The resolutions regarding the code of professional conduct shall be taken with a majority of the votes cast by all the members who have the right to vote. Other resolutions shall be taken by a majority of the voting members who are present at the meeting. Every member shall have one vote, shall not be bound by instructions and may only exercise his/her right to vote in person. Voting by proxy shall not be permitted.
- (4) The wording of the resolutions passed by the Statutory Assembly shall be recorded in minutes that shall be signed by the Chairperson and the Secretary and kept at the office of The German Federal Bar.
- (5) The resolutions passed by the Statutory Assembly shall come into force on the first day of the third month that follows their publication in the press journals for announcements of The German Federal Bar.

#### BRAO § 191e Review of resolutions of the Statutory Assembly by the Supervisory Authority

The by-laws shall come into force three months after they have been sent to the Federal Ministry of Justice in as far as the Federal Ministry of Justice does not overrule the by-laws or parts of thereof.

## Chapter ten Costs in matters concerning the legal profession

### Part one The fees of the Judicial Administration

BRAO § 192 Fees for admission to the legal profession and admission before a court.

- (1) For admission to the legal profession (§§ 6, 12) and initial admission before a court (§ 18 para. 2, § 19) a fee of 130 euro shall be charged irrespective of whether the Rechtsanwalt is admitted before one or several courts.  
For Rechtsanwaltsgesellschaften the fee for admission is 500 euro.
- (2) A separate fee of 60 euro shall be charged for each further admission before a court.
- (3) If admission to the legal profession or admission before a court are refused or if the application (§§ 6, 19) is withdrawn, the fee is 30 euro. The same applies in the cases set out in § 8a para. 3, § 9 para.s 3 and 4. For Rechtsanwaltsgesellschaften the fee is 150 euro.

#### BRAO § 193 Fee for appointing a deputy

- (1) A fee of 25 euro shall be charged for the appointment of a deputy (§§ 47, 53 para. 2 sentence 2, para.s 3 and 5, sections 161, 173 para. 1).
- (2) No fee shall be charged for the appointment of a liquidator to wind up a law practice (§§ 55, 173 para. 3).

#### BRAO § 194 Due date of payment, reduction or waiver of the fees

- (1) The fees set out in §§ 192 and 193 shall be due for payment at the end of the official act for which a fee is payable. They may also be demanded at an earlier date.
- (2) For reasons of fairness the fees may be waived in part or in full.

## Part Two

### Costs in disciplinary proceedings and in proceedings in the case of applications for a decision from the Lawyers' Disciplinary Court against the threat or the imposition of a fine or concerning a reprimand

#### BRAO § 195 No fee, disbursements

No fees shall be charged for disciplinary proceedings and proceedings in the case of a petition to the Lawyers' Disciplinary Court against the threat or the imposition of a fine (§ 57 para. 3) or concerning a reprimand (§ 74a para. 1). Only the disbursements shall be charged for in accordance with the Court Costs Act (*Gerichtskostengesetz*).

#### BRAO § 196 Costs in the case of petitions for the institution of proceedings before a Lawyers' Disciplinary Court

- (1) A Rechtsanwalt who withdraws a petition for a court decision regarding the decision of the Public Prosecutor's office (§ 123 para. 2) shall be charged the costs incurred in such proceedings.
- (2) If a petition of the Council of the Bar for a court decision is rejected in the cases set out in § 122 para.s 2 and 3, § 150a or § 161a para. 2, the costs incurred in the proceedings regarding the petition shall be charged to the Bar.

#### BRAO § 197 The duty of the convicted person to bear the costs

- (1) A Rechtsanwalt who is convicted in proceedings before a Lawyers' Disciplinary Court shall bear part or all of the costs of the proceedings.  
This shall also be the case if disciplinary proceedings are closed on the ground of the expiry, withdrawal or revocation of admission to the legal profession and the imposition of a disciplinary sanction would have been justified judging by the outcome of the proceedings so far; in this case the costs of the disciplinary proceedings shall also include the costs that are incurred in subsequent proceedings for the purpose of securing evidence (§§ 148, 149) . If proceedings are

closed under § 139 para. 3 no. 2, the court may order the Rechtsanwalt to pay part or all of the costs of the proceedings if the court considers this to be reasonable.

- (2) A Rechtsanwalt who has withdrawn an appeal to a higher court in disciplinary proceedings or who has been unsuccessful in making such an appeal shall be ordered to pay the costs incurred in such proceedings. If the appeal to a higher court was partially successful, the Rechtsanwalt may be ordered to pay a reasonable proportion of these costs.
- (3) Para. 2 shall apply accordingly regarding the costs that have been incurred in connection with a petition for the re-opening of proceedings that have been closed through a final judgment.

#### BRAO § 197a Liability to pay the costs of proceedings in the case of petitions to a Lawyers' Disciplinary Court against the threat or the imposition of a fine or concerning a reprimand

- (1) If the petition to the Lawyers' Disciplinary Court against the threat or the imposition of a fine or concerning a reprimand is dismissed as being unjustified, § 197 para. 1 sentence 1 shall apply accordingly. If the Lawyers' Disciplinary Court finds that the reprimand is invalid due to the imposition of a sanction by the Lawyers' Disciplinary Court (§ 74a para. 5 sentence 2) or if it overrules the reprimand in accordance with § 74a para. 3 sentence 2, the court may order the Rechtsanwalt to pay part or all of the costs of the proceedings if it considers this to be reasonable.
- (2) If the Rechtsanwalt withdraws the petition to the Lawyers' Disciplinary Court or if the petition is dismissed as being inadmissible, § 197 para. 2 sentence 1 shall apply accordingly.
- (3) If the threat or the imposition of a fine is quashed, necessary disbursements made by the Rechtsanwalt shall be charged to the Bar. The same applies if the notice of a reprimand is overruled (except in the case set out in § 74a para. 3 sentence 2) or if it is found that the reprimand is invalid on grounds of the Rechtsanwalt being acquitted in the disciplinary proceedings or for the reasons stated in § 115a para. 2 sentence 2 (§ 74a para. 5 sentence 2).

#### BRAO § 198 Liability of the Bar

- (1) Costs that are charged neither to the Rechtsanwalt nor to a third party or which cannot be collected from the Rechtsanwalt shall be charged to the Bar to which the Rechtsanwalt belongs.
- (2) In the proceedings before the Lawyers' Disciplinary Court the Bar shall be liable for compensating the witnesses and experts to the same extent as the public treasury is liable under the Code of Criminal Procedure. If these persons are summoned to a place far away from their place of residence, they shall be granted an advance on application.

#### BRAO § 199 Setting the costs of the proceedings before the Lawyers' Disciplinary Court

- (1) The costs that a Rechtsanwalt has to bear in proceedings before the Lawyers' Disciplinary Court shall be set through a resolution of the Presiding Judge of the division of the Lawyers' Disciplinary Court.
- (2) The Rechtsanwalt may lodge a special appeal against the ruling setting the costs within an emergency time limit of two weeks. The set term shall start to run when the ruling is served. The court that shall have jurisdiction regarding the special appeal shall be the Lawyers' Disciplinary Court whose Presiding Judge has pronounced the ruling. The Rechtsanwalt may file an immediate appeal against the decision of the Lawyers' Disciplinary Court.

### Part three The cost of proceedings in the case of petitions to a court in matters concerning admission and regarding elections and court rulings

#### BRAO § 200 Application of the Code of Costs (*Kostenordnung*)

In proceedings that are held in the case of petitions to a court in matters concerning admission and in the case of petitions to declare an election invalid or court rulings to be null and void (§§ 37 to 42, 91, 191), fees and disbursements shall be charged according to the Code of Costs. However § 8 para.s 2 and 3 of the Code of Costs shall not apply.



BRAO § 201 The cost liability of the petitioner and of the Bar

- (1) If a petition to the court is withdrawn, dismissed or rejected as being inadmissible, the petitioner shall be ordered to bear the costs of the proceedings.
- (2) If a petition to the court decision is granted, the costs of the proceeding shall be imposed on the Bar in the case set out in § 38; no fees and disbursements shall be charged in the case set out in § 39.
- (3) If a petition to declare an election invalid or a court ruling to be null and void is granted (§§ 91, 191), the costs of the proceedings shall be imposed on the Bar.

BRAO § 202 Fee for the proceedings

- (1) The full fee shall be charged for the court proceedings in the first instance.
- (2) The value of the matter at issue shall be determined according to § 30 para. 2 of the Code of Costs. It shall be set ex officio.
- (3) The same fee shall be charged for the appeal proceedings as is charged in the first instance.
- (4) If a petition or an appeal is withdrawn before the court has taken a decision, the fee shall be reduced to half of the full fee. This shall also be the case if the petition or an appeal is dismissed as being inadmissible.

BRAO § 203 Decision concerning special appeals

- (1) Decisions concerning objections and special appeals against the setting of costs shall always be taken by the Higher Lawyers' Court.
- (2) The decision taken by the Higher Lawyers' Court cannot be challenged.

## Chapter Eleven

### The enforcement of sanctions decided by the Lawyers' Disciplinary Court and collection of costs. Deletion of entries in personal files

BRAO § 204 Enforcement of sanctions decided by the Lawyers' Disciplinary Court

- (1) The exclusion of a Rechtsanwalt from the legal profession (§ 114 para. 1 no. 5) shall become effective when the judgment become final . The excluded person shall be deleted from the List of Rechtsanwälte on the basis of an authenticated copy of the judgment certified as final.
- (2) Warnings and cautions (§ 114 para. 1 nos. 1 and 2) shall be deemed enforced when the judgment becomes final.
- (3) A fine (§ 114 para. 1 no. 3) shall be enforced on the basis of a copy of the decision certified as final and issued by the Presiding Judge of the division of the Lawyers' Disciplinary Court in accordance with the rules that apply to the enforcement of judgments in civil litigation. The fine shall accrue to the Bar. Enforcement shall be the task of the Bar.
- (4) The fact that a Rechtsanwalt has left the legal profession after the proceedings have been closed and the decision is final shall be no reason why the fine may not be collected.
- (5) The ban on acting as representative and counsel in certain areas of law (§ 114 para. 1 no. 4) shall become effective when the judgment becomes final. The period of time covered by any provisional ban that has been ordered under § 150 or § 161a shall be counted as part of the period for which the ban is imposed.

BRAO § 205 Collection of costs

- (1) The costs incurred in proceedings before the Lawyers' Disciplinary Court shall be collected on the basis of the ruling setting the costs (§ 199) in accordance with § 204 para. 3.
- (2) The costs incurred before the Higher Lawyers' Court or the Federal Supreme Court shall be collected in accordance with the rules regarding the collection of court costs. The costs incurred

before the Higher Lawyers' Court shall be collected by the enforcement authority responsible for the Higher Regional Court where the Higher Lawyers' Court is established.

- (3) § 204 para. 4 shall apply accordingly.

#### BRAO § 205a Deletion of entries in personal files

- (1) Entries in a Rechtsanwalt's personal files with regard to a warning shall be deleted after five years; entries regarding a caution or a fine shall be deleted after ten years, even if they have been imposed conjointly. Any matters concerning these sanctions imposed by the Lawyers' Disciplinary Court shall be removed from the Rechtsanwalt's personal files and destroyed. After the expiry of the time limit these sanctions may no longer be taken into account if further disciplinary sanctions are imposed.
- (2) The set term shall start to run on the date when the disciplinary sanction becomes unchallengeable.
- (3) The set term shall not end as long as criminal proceedings, proceedings before a Lawyers' Disciplinary Court or a professional tribunal or other disciplinary proceedings are pending against the Rechtsanwalt or if another sanction of a professional tribunal may be taken into account (or a disciplinary sanction for Rechtsanwälte who are also notaries (Anwaltsnotare)), or if a judgment imposing a fine has not yet been enforced.
- (4) After the expiry of the time limit the Rechtsanwalt shall be deemed to be no longer affected by disciplinary sanctions imposed by a Lawyers' Court
- (5) Para.s 1 to 4 shall apply accordingly to reprimands from the Council of the Bar. The time limit shall be five years.
- (6) Entries concerning criminal convictions or other decisions in criminal proceedings, breaches of administrative rules or a breach of professional duties which have not resulted in a disciplinary sanction or a reprimand and admonitions from the Bar shall be deleted after five years on the Rechtsanwalt's request. Para. 1 sentence 2 and para.s 2 and 3 shall apply accordingly.

## Chapter Twelve

### Lawyers from other countries

#### BRAO § 206 Establishment

- (1) A person from a member state of the World Trade Organisation who practises a profession and who, in terms of training and rights, satisfies the definition of a Rechtsanwalt under this Act shall have a right of establishment in Germany and may use the professional title of his/her country of origin. Such a person shall have the right to provide legal services in the fields of law of his/her country of origin and in international law, if he/she, on application, has been accepted by the Bar responsible for the locality where he/she is established. The Federal Ministry of Justice shall have powers to determine by statutory order and without the consent of the Upper House of Parliament which professions are equivalent to the profession of "Rechtsanwalt" under this Act in terms of training and rights.
- (2) Para. 1 shall apply accordingly to nationals from other states who practise a profession which is equivalent to that of a Rechtsanwalt under this Act in terms of training and rights on condition that the right to offer legal services is limited to the law of this person's country of origin, if reciprocity with the country of origin is guaranteed. The Federal Ministry of Justice shall have powers to determine by statutory order and without the consent of the Upper House of Parliament the states for whose nationals this rule shall apply and for which professions.

#### BRAO § 207 Procedure, professional status

- (1) The decision regarding an application for admission to the Bar shall be taken by the Regional Judicial Administration. A certificate from the responsible authority in the country of origin stating that the person in question is a member of the profession must be submitted with the application. This certificate must be resubmitted to the Regional Judicial Administration every year. If the member of the Bar fails to comply with this duty or if the preconditions in § 206 are no longer met, admission to the Bar shall be revoked.
- (2) Chapter Two of this Act shall apply *mutatis mutandis* to the decision regarding the application, the Rechtsanwalt's legal status after admittance to the Bar and the withdrawal and revocation of rights of admittance to the Bar, with the exception of §§ 4 to 6, 12, 18 to 27 and 29 to 36. Chapters Three, Four, Six, Seven, Ten, Eleven and Thirteen shall likewise apply. Bans on acting as counsel under § 114 para. 1 no. 4 and §§ 150 and 161a must be imposed in respect of the area in which this Act is in force. Exclusion from the legal profession (§ 114 para. 1 no. 5) shall be replaced by a ban on offering foreign legal services in the area in which this Act is in force; when this decision becomes final, the convicted person shall cease to be a member of the Bar.
- (3) The Rechtsanwalt must establish a law practice in the district of the Bar where the Rechtsanwalt has been admitted. If the Rechtsanwalt fails to comply with this duty within three months after being admitted to the Bar or if the Rechtsanwalt abandons the law practice, admission to the Bar shall be revoked.
- (4) The Rechtsanwalt must indicate his/her country of origin in his/her professional title. The Rechtsanwalt shall also have the right to use the title "Member of the Bar" in professional dealings.

### Chapter thirteen Transitional and final provisions

#### BRAO §§ 206 and 207

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#### Part one

#### Transitional provisions

#### BRAO § 208 Applicants who are qualified for the higher administration service

Applicants who, at the time that this Act came into force, had the right to take full-time judicial office at a court of general administrative jurisdiction by virtue of having passed the prescribed examinations may not be denied admission to the legal profession simply because they do not meet the precondition set out in § 4.

#### BRAO § 209 The right of holders of a licence under the Law on Legal Advice (*Rechtsberatungsgesetz*) to be members of a Bar

- (1) Natural persons who are in possession of a full licence to provide professional legal services or are in possession of a licence excluding only the provision of professional legal services in the field of social law or social security law shall, on application, be admitted to the Bar that is responsible for the locality where they are established. They may also call themselves "Member of the Bar" in professional dealings. Chapter Two of this Act shall apply *mutatis mutandis* as regards the decision concerning the application, status after admission to the Bar and the invalidation or expiry of the licence, that is with the exception of sections 4 to 6, 12, 18 to 27 and 29 to 36. Chapters Three, Four, Six, Seven, Ten, Eleven and Thirteen shall likewise apply. The holder of the licence may draw attention to special expertise in of the areas mentioned in § 43c para. 1 sentence 2 by adding the word "Fachgebiet" (area of specialisation) indicating no more than two of the areas of law provided for in § 43c para. 1 sentence 2.
- (2) Admission to the Bar shall be revoked on the application of the holder of the licence. The revocation shall not affect the licence to offer professional legal services. The decision regarding

the revocation shall be suspended as long as disciplinary proceedings before a Lawyers' Court are pending against the holder of the licence.

- (3) If there is any change in the place of establishment, only the locality shown on the licence shall be altered, on the application of the holder of the licence. The alteration shall be ordered by the Judicial Administration of the *Land* in which the new place of establishment is located; § 33 para. 2 shall apply mutatis mutandis. As soon as the alteration has been made, the holder of the licence shall become a member of the regional Bar which is responsible for the new locality.
- (4) Licences for branch offices or for holding external consulting days and that are granted under § 1 para. 1 sentence 2 of the Statutory Order on the Implementation of the Law on Legal Advice (*Verordnung zur Ausführung des Rechtsberatungsgesetzes*) of 13 December 1935 (Reich Gazette I p. 1481) shall not be affected. The Regional Judicial Administration may revoke this licence if this is in the interests of the administration of justice.
- (5) The Regional Judicial Administration may revoke the licence to offer professional legal services if the holder of the licence has not practised his/her profession in the locality where he/she is established for more than three months and his/her place of abode is not known.

#### BRAO § 210 Former licences to bear the title of "Specialised Lawyer" (*Fachanwalt*)

Rechtsanwälte who were permitted by the Bar to call themselves a "Specialised Lawyer" (*Fachanwalt*) for administrative law, taxation law, labour law or social law when the Act Altering the Professional Rights of Notaries and Rechtsanwälte (*Gesetz zur Änderung des Berufsrechts der Notare und der Rechtsanwälte*) of 29 January 1991 (Federal Gazette. I p. 150) came into force need provide no further evidence that they have the necessary expertise in this area.

#### BRAO § 211 Insignificant convictions

When a decision is taken concerning an application for admission to the legal profession a conviction may not be taken into consideration as a reason for refusal (§ 7 nos. 2 to 4) if it was imposed between 30 January 1933 and 8 May 1945 and was based purely or primarily on racist, political or religious grounds.

#### BRAO § 212 Subsequent admission before a court

- (1) If a Rechtsanwalt had his/her place of residence or place of permanent abode in the area in which this Act is in force at the time it came into force and wishes to practise here as a Rechtsanwalt, but is not yet admitted before a court in the area in which this Act is in force, such a Rechtsanwalt shall apply for this admission (§ 18 para. 1) within three months after this Act comes into force. If the Rechtsanwalt in question fails to do this within one year, his/her admission to the legal profession shall expire; however if proceeding under 40 et seq. are pending at this time, admission shall not expire until the application for admission before a court has finally been rejected.
- (2) Para. 1 shall apply accordingly if a Rechtsanwalt does not establish his/her place of residence or place of permanent abode in the area in which this Act is in force until after it has come into force. The set term mentioned in para. 1 shall start to run on the date that the Rechtsanwalt establishes his/her place or residence or place of permanent abode.
- (3) A Rechtsanwalt who has his/her place of residence or place of permanent abode in the area in which this Act is in force and has not yet been admitted before a court in this area shall belong to the Bar in whose district such a Rechtsanwalt has his/her place of residence or permanent place of abode, as long as his/her admission to the legal profession under para. 1 or para. 2 has not yet expired. However during this time the Rechtsanwalt is not obliged to pay dues to the Bar.

#### BRAO § 213 Exemption from the duty to take up residence

- (1) Rechtsanwälte or applicants who were forced to leave the country during the period between 30 January 1933 and 8 May 1945 for reasons of racism, politics or religion and who are still resident abroad shall be exempt from the obligations set out in § 27.
- (2) In the cases set out in para. 1 an applicant who cannot be reasonably expected to appear to be sworn before a court where he/she is admitted soon after being admitted to the legal profession

may also take the oath (§ 26) before a German consul who is authorised to accept oaths. The court must request the consul to accept the oath. Furthermore § 26 shall apply accordingly..

#### BRAO § 214

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#### BRAO § 215 Continuation of Bars

- (1) Bars existing at the time that the Federal Lawyer's Act came into force and which did not have their seat in the locality where a Higher Regional Court sits shall continue to exist in as far as one of these Bars does not decide to dissolve itself within six months of this Act coming into force.
- (2) Bars existing on 8 September 1998 in the *Länder* of Brandenburg, Mecklenburg-Vorpommern, Saxony, Saxony-Anhalt and Thuringia whose seat was not situated in the locality where the Higher Regional Court sits, in departure from § 60 para. 2, shall continue to exist.

#### BRAO §§ 216 to 220

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#### BRAO § 221 The German Federal Bar as an "Aufnahmeeinrichtung"

The German Federal Bar is an "entsprechende Einrichtung" in relation to the Bar of the Reich in the meaning of § 61 of the Act Regulating the Legal Relations of Persons Who Come within the Scope of Article 131 of the Basic Law (*Gesetz zur Regelung der Rechtsverhältnisse der unter Artikel 131 des Grundgesetzes fallenden Personen*), as amended on 11 September 1957 (Federal Gazette I p. 1297) (number 54 in Schedule A on § 2 para. 1 of the said Act). The highest administrative authority is the Federal Ministry of Justice.

#### BRAO § 222

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### Part two Final provisions

#### BRAO § 223 Supplementary provisions concerning legal protection

- (1) Administrative acts performed under this Act or under a statutory order passed under this Act may be challenged by applying for a ruling from a Lawyers' Disciplinary Court, even if this is not expressly provided for. The petition must be filed within one month after notice of the administrative act has been served. It may only be substantiated by the claim that the administrative act has encroached on the applicant's rights because the act in question is unlawful. § 39 para. 3 shall apply accordingly.
- (2) The petition to the court shall also be admissible if no decision has been taken within three months concerning an application for an administrative act without there being adequate grounds for such inaction. The application shall be admissible for an unlimited period of time.
- (3) An immediate appeal to the Federal Supreme Court shall be admissible against the decision of the Higher Lawyers' Court if the Higher Lawyers' Court has allowed the appeal in its judgment. The Higher Lawyers' Court may only allow an immediate appeal if it has taken a decision on questions of law which are of fundamental importance.
- (4) Sections 37 and 39 to 41 shall apply accordingly regarding the proceedings before the Higher Lawyers' Court; § 42 para.s 4 to 6 shall apply accordingly regarding proceedings before the Federal Supreme Court and §§ 200 to 203 shall apply accordingly in relation to the costs.

#### BRAO § 224 Delegation of rights to subordinate authorities

The Federal Ministry of Justice and the Regional Judicial Administration may delegate duties and rights granted to them under this Act to subordinate authorities.

#### BRAO § 224a Delegation of rights to the Bar

- (1) The governments of the *Länder* shall have powers to issue statutory orders partially or fully delegating the rights and duties granted to the Regional Judicial Administration under this Act to the regional Bars; this does not apply to decisions in accordance with the First and Third Parts of Chapter Four and in accordance with the First and Second Parts of Chapter Five of this Act. The governments of the *Länder* may delegate such powers to the Regional Departments of Justice by way of statutory order.
- (2) In as far as such powers have been delegated, the Bar shall be responsible for investigating the matter (§ 36a). For this purpose it may also request unlimited information as a normal request under § 41 para. 1 of the Federal Central Register Act (*Bundeszentralregistergesetz*). The hearing provided for in individual proceedings, expert opinions or notification of the Bar shall not be required.
- (3) The Bar shall inform the court before which a Rechtsanwalt is admitted of the Rechtsanwalt's admission to the legal profession, the withdrawal or revocation of the Rechtsanwalt's admission to the legal profession (§§ 31 and 36), the death of a Rechtsanwalt, the grant of any licence and its revocation under § 28 para.s 1 and 2 and of any dispensation and revocation of such under § 29 para.s 1 and 2 and § 29a para.s 2 and 3 sentence 2.  
If a Rechtsanwalt also belongs to a Chamber of Notaries the withdrawal and revocation of his/her admission as a Rechtsanwalt must also be notified immediately to the Regional Judicial Administration and the Chamber of Notaries.
- (4) The rights and duties delegated to the Bar under para. 1 shall accrue to the Council. In departure from § 73 para. 3, the Council may delegate these rights and duties to individual members of the Council. In as far as rights are delegated, the Assembly of the Bar may decide that administration fees shall be charged, in departure from §§ 192 to 194, setting the amount and the date when such fees shall be due for payment.
- (5) In as far as rights and duties have been delegated to the Bar, §§ 37 to 42 shall apply to the proceedings in the case of petitions to a court in matters concerning admission on the following conditions:
  1. In as far as the Bar has taken a decision, the petition to a court (§ 39) must be directed against the Bar.
  2. The Bar shall act in lieu of the Regional Judicial Administration (§ 41 para.s 3 and 4).
  3. If decisions of the Bar are challenged, the Higher Lawyers' Court shall also give the Regional Judicial Administration an opportunity to express an opinion (§ 40).
  4. In the first instance the Regional Judicial Administration shall always have a right of appeal irrespective of whether it is party to the proceedings (§ 42 para. 2). The Bar shall have a right of appeal in all cases.
- (6) If the Rechtsanwalt also belongs to a Chamber of Notaries, the approval of the Regional Judicial Administration must first be sought in the case set out in § 28.

BRAO § 225 Appearance of Rechtsanwälte before the courts and the authorities of the *Länder*

- (1) This shall not affect the right of the legislature of the *Länder* to provide for the exclusion of representatives and counsel in proceedings before an arbitrator or before other arbitration and conciliation tribunals. In as far as the laws of the *Länder* allow for representatives or counsel to be excluded, this shall not apply to Rechtsanwälte.
- (2) In as far as previous laws of the *Länder* only allow Rechtsanwälte who are admitted in the *Land* to appear before its courts or its authorities, Rechtsanwälte who have rights of audience before the courts of another German *Land* may also appear.

BRAO § 226 Concurrent admission before the Regional Court and the Higher Regional Court

- (1) Rechtsanwälte who at the time when this Act comes into force are admitted before a Higher Regional Court and before a Regional Court or who are admitted before a Regional Court and have the right to appear before a Higher Regional Court shall keep this admission or these rights.
- (2) Rechtsanwälte who are admitted before the Regional Courts of Baden-Württemberg, Bavaria, Berlin, Bremen, Hamburg, Saarland, Saxony, Saxony-Anhalt and Thuringia may, on application, also be admitted before the Higher Regional Court if they have been admitted for five years before a court of first instance.

(3) (repealed)

BRAO § 227 Concurrent admission before the highest Regional Court

- (1) If a *Land* has a highest Regional Court under § 8 of the Introductory Act of the Court Constitution Act (*Einführungsgesetz zum Gerichtsverfassungsgesetz*), the Rechtsanwälte who are admitted before the Higher Regional Courts of this *Land* shall be concurrently admitted before the highest Regional Court.
- (2) The highest Regional Court shall not keep a List of Rechtsanwälte (§ 31 para. 1).

BRAO §§ 227a and 227b  
(repealed)

BRAO § 228 Determination by the highest Regional Court or the Lawyers' Disciplinary Court or the Higher Lawyers' Court that shall have jurisdiction

- (1) If a *Land* has a highest Regional Court it shall determine which Lawyers' Disciplinary Court shall have jurisdiction in lieu of the Federal Supreme Court in the case of a dispute between several Lawyers' Disciplinary Courts or if the Lawyers' Disciplinary Court that actually has jurisdiction is legally or materially prevented from exercising its function in an individual case. However this shall only be the case if the Lawyers' Disciplinary Courts involved in the dispute over which court has jurisdiction or the Lawyers' Disciplinary Court that is prevented from exercising its function are formed within the *Land*.
- (2) Para. 1 shall apply accordingly in determining which Higher Lawyers' Court shall have jurisdiction.

BRAO § 229 Procedure for the service of notices

The provisions of the Code of Civil Procedure shall apply accordingly regarding the procedure for the service of notices.

BRAO §§ 230 to 232

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BRAO §§ 233 Legal successor of the former Bar of the German Reich

- (1) The German Federal Bar is the legal successor to the former Bar of the German Reich.
- (2) In as far as nothing to the contrary is prescribed by law, it shall assume all legal rights and duties of the former Bar of the German Reich in matters concerning assets, but shall only be liable in respect of the sum of the assets that it has taken over. The provisions of the Civil Code concerning an inheritance falling to the fiscal authorities as legal heir shall apply accordingly.
- (3) The assets of the former Bar of the German Reich that were transferred in trust to the Bar of Berlin by the Berlin Commission for Claims to Assets under Control Council Directive no. 50 shall devolve to The German Federal Bar. The Berlin Bar shall be exempt from the liability imposed on it under Article IV of Control Council Directive no. 50. This shall have no bearing on the transfer of assets to the Land of Berlin and the liability thus involved.
- (4) No court costs shall be charged on grounds of and in implementing the transfer of rights.

BRAO § 234 Particular restrictions on access to the legal profession under the laws of the *Länder*

This shall not affect restrictions on access to the legal profession under the laws of the *Länder* concerning political exemption. They shall also apply in the case of any change in admission.

BRAO § 235 References in other provisions

/\* In as far as there is a reference in other Acts and regulations to the laws repealed or amended by this Act they shall be replaced by the corresponding provisions of this Act. \*/

BRAO § 236 Validity in Berlin

This Act shall also apply in Berlin as set out in § 13 para. 1 of the Third Transitory Act (*Drittes Überleitungsgesetz*) of 4 January 1952 (Federal Gazette I p. 1).

BRAO § 237 Coming into force

(1) This Act shall come into force on 1 October 1959.

(2) ...

BRAO Appendix Treaty of Unification (*EV*) Excerpt from the Treaty of Unification (*EinigVtr*) Schedule I Chapter III Subject A Parts I and IV (Federal Gazette II 1990, 889, 921, 938) Part I – Provisions that shall not come into force in the territory of accession – Part IV - Special provision for the Land of Berlin -

Part I

The following provisions form an exception to the rule that the law of the Federal Republic of Germany shall come into force under Article 8 of the Treaty, subject to the special provision for Berlin in Part IV:

...

7. /\* The Federal Lawyers' Act in the corrected version published in the Federal Gazette Part III, classification number 303-8, last amended by Article 3 of the Act of 6 July 1990 (Federal Gazette I p. 1349)

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Part IV

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1. In departure from Part 1, the following legal provisions shall also apply in the part of Berlin which has now been incorporated into the Federal Republic:

a) The Federal Lawyers' Act in the corrected version published in the Federal Gazette Part III, classification number 303-8, last amended by Article 3 of the Act of 6 July 1990 (Federal Gazette I p. 1349), subject to the following conditions:

- aa) Rechtsanwälte who had a law practice in the part of Berlin where the Basic Law did not hitherto apply on the date that this part of Berlin was effectively incorporated into the Federal Republic of Germany shall be deemed admitted to the legal profession under the Federal Lawyers' Act. They shall belong to the Berlin Bar. They shall make an application for admission before a court of ordinary jurisdiction in Berlin. If the application is not made within three months after this part of Berlin has been effectively incorporated into the Federal Republic their admission to the legal profession shall be revoked.
- bb)
- cc) Breaches of professional duties which were committed before Berlin was effectively incorporated into the Federal Republic of Germany shall be subject to the limitation period set out in the Statutory Order concerning the Work and the Admission of Rechtsanwälte with an Independent Law Practice (*Verordnung über die Tätigkeit und die Zulassung von Rechtsanwälten mit eigener Praxis*) of 22 February 1990 (Law Gazette I no. 17 p. 147).