

Übersetzung durch Jane Yager. Laufende Aktualisierung der Übersetzung durch Samson Übersetzungen GmbH, Dr. Carmen v. Schöning

Translation provided by Jane Yager. Translation regularly updated by Samson Übersetzungen GmbH, Dr. Carmen v. Schöning

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Act on Model Case Proceedings in Disputes under Capital Markets Law (Kapitalanleger-Musterverfahrensgesetz – KapMuG)

Act on Model Case Proceedings in Disputes under Capital Markets Law of 16 July 2024 (Federal Law Gazette 2024 I no. 240).

Division 1

Application for the establishment of a model case; referral procedure

Section 1

Scope; relationship to the Act on the Enforcement of Consumer Rights (*Verbraucherrecht*durchsetzungsgesetz)

(1) The present Act is applicable in civil disputes in which any one of the following claims is asserted:

1. a claim to compensation of damages for false or misleading public capital markets information or for failure to provide such information,
2. a claim to compensation of damages for the use of false or misleading public capital markets information or for failure to provide the requisite clarification as to the public capital markets information being false or misleading,
3. a claim to performance under a contract, such claim being based on an offer under the Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz* – WpÜG), including a claim as defined in section 39 (3) sentences 3 and 4 of the Stock Exchange Act (*Börsengesetz* – BörsG), or
4. a claim to compensation of damages according to Article 75 (8) of Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150 of 9 June 2023, p. 40; L, 2024/90275, 2 May 2024), amended by Regulation (EU) 2023/2869 (OJ L, 2023/2869, 20 December 2023).

(2) Public capital markets information means information directed at a large number of investors regarding facts, circumstances, key figures and other company data that relate to an issuer of securities or an offeror of other capital investments. This especially includes the particulars set out

1. in prospectuses governed by Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168 of 30 June 2017, p. 12), last amended by Regulation (EU) 2023/2869 (OJ L, 2023/2869, 20 December 2023),
2. in securities information sheets according to the Securities Prospectus Act (*Wertpapierprospektgesetz – WpPG*) and information sheets under the Securities Trading Act (*Wertpapierhandelsgesetz – WpHG*),
3. in sales prospectuses, capital investment information sheets, and key investor information governed by the Sales Prospectus Act, the Capital Investment Act (*Vermögensanlagegesetzbuch*), the version of the Investment Act (*Investmentgesetz – InvG*) in force until midnight of 21 July 2013, and the Capital Investment Code (*Kapitalanlagegesetzbuch – KAGB*),
4. in key investment information sheets according to Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L 347 of 20 October 2020, p. 1), amended by Delegated Regulation (EU) 2022/1988 (OJ L 273 of 21 October 2022, p. 3),
5. in crypto-asset white papers according to Regulation (EU) 2023/1114,
6. in notifications of inside information according to Article 17 of Regulation (EU) No. 596/2014 of the European Parliament and of the Council on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173 of 12 June 2014, p. 1; L 287 of 21 October 2016, p. 320; L 348 of 21 December 2016, p. 83), last amended by Regulation (EU) 2023/2869 (OJ L, 2023/2869, 20 December 2023), and according to section 26 of the Securities Trading Act,
7. in presentations, overviews, lectures and information provided at the general meeting on the circumstances of the company including its relationships with affiliated enterprises within the meaning of section 400 (1) no. 1 of the Stock Corporation Act (*Aktiengesetz – AktG*),
8. in annual financial statements, management reports, consolidated financial statements, consolidated management reports and half-year financial reports by the issuer,
9. in ratings relating to the issuer of securities or the offeror of some other capital investment products according to Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of 16. September 2009 on credit rating agencies (OJ L 302 of 17 November 2009, p. 1; L 350 of 29 December 2009, p. 59; L 145 of 31 May 2011, p. 57), last amended by Regulation (EU) 2023/2869 (OJ L, 2023/2869, 20 December 2023), as well as in the audit reports by statutory auditors on the annual financial statements and consolidated financial statements to be disclosed by the issuer, and
10. in offer documents within the meaning of section 11 (1) sentence 1 of the Securities Acquisition and Takeover Act.

(3) The present Act is not to be applied to representative actions under the Act on the Enforcement of Consumer Rights; section 18 (2) sentence 2 remains unaffected. The admissibility of model case proceedings under the present Act is not contravened by the pendency of a representative action pertaining to the same cause of action.

Section 2

Application for the establishment of a model case

(1) By an application for the establishment of a model case, the plaintiff and the defendant can apply, in proceedings at first instance, for the establishment by a court of the existence or non-existence of factual or legal pre-requisites for the existence or non-existence of claims or legal relationships (establishment objectives).

(2) The application for the establishment of a model case is to be filed with the court hearing the original case and is to cite the establishment objectives and the public capital markets information concerned. In the case governed by section 1 (1) no. 4, the incidents under Article 75 (8) of Regulation (EU) 2023/1114 are to be cited instead of the public capital markets information concerned.

(3) The application is to cite the facts and evidence serving as the reasons on which the application is based. The applicant must demonstrate that the decision on the establishment objectives in the model case proceedings may have significance, above and beyond the individual legal dispute, for other legal disputes pertaining to similar matters.

(4) The defendant is to be given the opportunity to submit observations.

Section 3

Decision on the application for the establishment of a model case

(1) The court hearing the original case decides on the admissibility of the application for the establishment of a model case by incontestable order.

(2) The court hearing the original case will dismiss the application for the establishment of a model case as inadmissible insofar as

1. it is not expected that the decision on the legal dispute on which the application for the establishment of a model case is based will depend on the establishment objectives that are being asserted,
2. the evidence cited is not suited to serve as proof of the establishment objectives that are being asserted,
3. the significance for other legal disputes pertaining to similar matters has not been demonstrated, or
4. the application for the establishment of a model case is made for the purpose of obstructing the proceedings.

Section 4

Notice by publication of the application for the establishment of a model case

(1) The court hearing the original case gives notice of an admissible application for the establishment of a model case by publication in the Register of Model Case Proceedings (section 5). As a rule, the notice by publication is to be effected within three months of the application having been received.

(2) The notice by publication is to be furnished with the date on which it is published and contains the following particulars:

1. the complete designation of the defendants and their legal representatives,
2. the designation of the issuer of securities, offeror of other capital investments or crypto-asset service provider affected by the application for the establishment of a model case,
3. the designation of the court hearing the original case,

4. the reference number at the court hearing the original case,
5. the establishment objectives set out in the application for the establishment of a model case, including the public capital markets information concerned or the incidents under Article 75 (8) of Regulation (EU) 2023/1114,
6. a brief presentation of the cause of action submitted to the court,
7. the amount of the claim being asserted by the plaintiff, insofar as the claim is affected by the establishment objectives of the model case proceedings, and
8. the point in time at which the application for the establishment of a model case was received by the court hearing the original case.

Section 5

Register of Model Case Proceedings; authorisation to issue statutory instruments

- (1) The Register of Model Case Proceedings is maintained in the Federal Gazette (*Bundesanzeiger*) under the heading “Register under the Act on Model Case Proceedings in Disputes under Capital Markets Law.”
- (2) Everyone is entitled to access the Register of Model Case Proceedings free of charge.
- (3) The court arranging the notice by publication bears responsibility under data protection law for the data it has published in the Register of Model Case Proceedings, in particular for the legality of the collection of these data, for the permissibility of their publication and for the correctness of the data’s presentation. The operator of the Register of Model Case Proceedings processes the data on behalf of the court arranging the notice by publication in question and in accordance with said court’s instructions.
- (4) The data stored in the Register of Model Case Proceedings are to be deleted six months after the final and binding conclusion of the model case proceedings or, in the case governed by section 7 (5) sentence 1, six months after the application for the establishment of a model case has been denied.
- (5) The Federal Ministry of Justice is authorised to stipulate, by statutory instrument not requiring the approval of the Bundesrat, more detailed provisions on the content and structure of the Register of Model Case Proceedings, in particular with regard to entries, modifications, deletions, rights of access, data security and data protection. In this context, provisions are to be made ensuring that, where the notices by publication are concerned,
 1. their integrity is maintained and they remain complete and current, and that
 2. they can be traced to their origins at any given time.

Section 6

Interruption of the proceedings

The respective original proceedings from which the model case proceedings are derived (original proceedings) are interrupted upon notice by publication being given of the application for the establishment of a model case, insofar as the decision on the legal dispute is expected to depend on the establishment objectives that are being asserted.

Section 7

Referral to the higher regional court; authorisation to issue statutory instruments

(1) By court order referring the matter to the court of higher instance (referral order), a decision is to be obtained, from that higher regional court that is the court of higher instance, concerning the establishment objectives set out in applications for the establishment of a model case that pertain to the same cause of action (parallel applications), provided that notice of no fewer than nine further such applications has been given by publication within six months of the first notice of an application for the establishment of a model case having been given by publication. The referral order is issued without undue delay upon the time limit set out in sentence 1 having elapsed. The referral order is incontestable.

(2) The court hearing the original case of the first application for the establishment of a model case of which notice was given by publication is competent for the referral order.

(3) The referral order sets out the following:

1. the establishment objectives,
2. a brief presentation of the underlying cause of action that the applications for the establishment of a model case have in common,
3. the evidence cited, and
4. a compilation of all parallel applications of which notice has been given by publication, along with the particulars stipulated in section 4 (2).

(4) The court hearing the original case gives notice of the referral order without undue delay by publishing it in the Register of Model Case Proceedings. Concurrently, it informs the higher regional court of the full designation of the plaintiffs in those original proceedings that are the subject matter of the referral order.

(5) If, within six months of notice having been given by publication of a -certain application for the establishment of a model case, notice has been given by publication of fewer than a further nine parallel applications, then the court hearing the original case is to dismiss the application by order and is to continue the respective original proceedings. The order is incontestable.

(6) If several higher regional courts have been established in one *Land*, then the *Land* government may transfer competence for model case proceedings under this Act, by statutory instrument, to one of the higher regional courts or to the supreme court established by the *Land* for its territory. The *Land* governments may confer, by statutory instrument, the authorisation upon the *Land* departments of justice.

(7) The *Länder* may establish, by interstate treaty, the competence of one higher regional court for model case proceedings under this Act for individual districts or for the entire area made up by the territories of several *Länder*.

Section 8

Preclusive effect of the referral order

Upon issuance of the referral order, filing further parallel applications will be inadmissible.

Division 2

Conducting the model case proceedings

Section 9

Opening of the model case proceedings; determination of the model case plaintiff

(1) The higher regional court initiates the model case proceedings by incontestable order (opening order) insofar as a hearing for oral argument and decision on the establishment objectives set out in the referral order will serve the purposes of the model case proceedings. In so doing, it may divide up the overall subject matter of the dispute into thematic subsets and restate the establishment objectives.

(2) The opening order sets out:

1. the establishment objectives,
2. a brief presentation of the cause of action underlying the model case proceedings as it results from the global view of the applications for the establishment of a model case submitted to the court, and
3. the determination of the model case plaintiff (subsection (3)).

(3) The higher regional court determines, at its equitably exercised discretion, the model case plaintiff from among the plaintiffs of the original proceedings that have been interrupted

in accordance with section 6. In making the selection, the following is to be taken into account:

1. the suitability of the plaintiff to adequately conduct the model case proceedings having due regard to the interests of the other plaintiffs,
2. any agreement that may have been reached, under certain circumstances, among several plaintiffs on a model case plaintiff, and
3. the amount of the claim insofar as it is affected by the establishment objectives of the model case proceedings.

(4) Where the prerequisites stipulated in subsection (1) have not been met, the higher regional court refuses to open the proceedings by incontestable order. The court hearing the original case will continue any original proceedings that have been interrupted in accordance with section 6.

(5) As a rule, the decision on the opening of proceedings is to be handed down within four months of notice of the referral order having been given by publication.

(6) The higher regional court gives notice of orders opening the model case proceedings and orders refusing to open such proceedings without undue delay by publishing them in the Register of Model Case Proceedings. The notice given by publication of the opening order is to include instructions on the requirements as to form that the application for a claim to be registered as part of the model case proceedings is to meet, on the time limit for filing it, and on its effects (section 13).

Section 10

Suspension of original proceedings

(1) Upon notice of the opening order having been given by publication, the court hearing the original case suspends, ex officio, the original proceedings that have been interrupted in accordance with section 6 insofar as the decision on the legal dispute is expected to depend on the establishment objectives of the model case proceedings. If the court hearing the original case refuses to so suspend the original proceedings, then it will notify the higher regional court of this fact and will continue the original proceedings.

(2) Upon application by the plaintiff, the court hearing the original case will suspend original proceedings that thus far had not been interrupted and that already are pending or that will become pending prior to the final and binding conclusion of the model case proceedings, insofar as the decision on the legal dispute is expected to depend on the establishment objectives of the model case proceedings. Prior to such suspension, the defendant is to be given the opportunity to submit observations.

(3) The court hearing the original case is to notify the higher regional court without undue delay of the suspension. In so doing, it is to provide the complete designation of the parties to the respective original proceedings and the amount of the claim insofar as this is affected by the establishment objectives of the model case proceedings.

(4) The plaintiffs of original proceedings that have been suspended must enter into the model case proceedings in whatever situation these proceedings may be at the time their original proceedings are suspended.

Section 11

Parties involved in the model case proceedings

(1) The parties involved in the model case proceedings are:

1. the model case plaintiff,
2. the model case defendants,
3. the interested parties summoned.

(2) The model case plaintiff is that plaintiff whom the higher regional court determines as such in accordance with section 9 (3).

(3) The defendants in the suspended original proceedings are the model case defendants.

(4) Those plaintiffs in the suspended original proceedings who are not selected as the model case plaintiff are interested parties summoned. They are entitled to assert means of attack or defence and to effectively take all actions in the proceedings, provided that their declarations and actions are not in opposition to the declarations made and actions taken by the model case plaintiff.

(5) On application by an interested party summoned, the higher regional court may remove the model case plaintiff and appoint, at its equitably exercised discretion, a new model case plaintiff in accordance with the stipulations of section 9 (3) sentence 2 if the model case plaintiff fails to appropriately conduct the model case proceedings.

Section 12

Expansion of the model case proceedings

(1) Following notice by publication of the opening order, the parties involved in the model case proceedings each may file a request seeking to expand the model case proceedings by further establishment objectives.

(2) The request is to be filed with the higher regional court, specifying the establishment objectives and the public capital markets information concerned. In the case governed by section 1 (1) no. 4, the incidents under Article 75 (8) of Regulation (EU) 2023/1114 are to be specified instead of the public capital markets information concerned.

(3) The higher regional court will expand the model case proceedings by incontestable order (expansion order) insofar as

1. the further establishment objectives pertain to the same cause of action underlying the opening order,
2. the decision on the original legal dispute from which the model case proceedings are derived depends on the further establishment objectives and
3. the expansion serves the purpose intended.

(4) Insofar as the prerequisites stipulated in subsection (3) have not been met, the higher regional court will refuse to expand the model case proceedings by incontestable order.

(5) The higher regional court gives notice of expansion orders and orders on the refusal to expand the model case proceedings, without undue delay, by publication in the Register of Model Case Proceedings.

Section 13

Application for a claim to be registered as part of the model case proceedings

(1) Within six months of notice of the opening order having been given by publication, an application may be filed, in writing, with the higher regional court for a claim to be registered as part of the model case proceedings. The applicant must be represented by an attorney.

(2) The application for registration of a claim must include:

1. the designation of the party seeking registration of its claim and the designation of its legal representatives,
2. the reference number of the model case proceedings,
3. the designation of the model case defendant against whom the claim is being asserted, and
4. the designation of the grounds for the claim the registration of which is being sought, and its amount.

(3) The application for registration is impermissible insofar as an action already has been brought regarding the same claim.

(4) The application for registration is to be served on the model case defendants designated therein.

Section 14 **General procedural rules**

(1) Unless otherwise provided for, the provisions stipulated under the Code of Civil Procedure (*Zivilprozessordnung* – ZPO) applicable to proceedings at the first instance before the regional courts are to be applied accordingly to the model case proceedings at the first instance. Section 278 (2) to (5) and sections 306, 348 to 350 and 379 of the Code of Civil Procedure are not to be applied. The interested parties summoned are not designated in the recital of parties in orders, to the exception of the model case ruling.

(2) Notice by publication in the Register of Model Case Proceedings may take the stead of service to the interested parties summoned of summonses to court hearings and of interlocutory decisions. A minimum of two weeks must lapse between the notice by publication and the date of the hearing.

Section 15 **Electronic maintenance of files**

In derogation from section 298a (1a) sentence 1 of the Code of Civil Procedure, the court records of the model case proceedings at the first instance will be maintained as electronic files from 1 January 2025.

Section 16 **Preparation for the hearing; written pleadings**

(1) By way of preparing for the hearing, the presiding judge or a member of the division whom the presiding judge has designated may instruct the interested parties summoned to file supplementations to the submissions made by the model case plaintiff, and in particular may set a time limit for a statement on certain points requiring further elucidation.

(2) Notice of the written pleadings filed by the parties involved, as well as of the interlocutory decisions handed down by the higher regional court in the model case proceedings, is given by publication in an electronic information system that is accessible only to the parties involved. Where the court records of the model case proceedings at the first instance are maintained as electronic files, the higher regional court may forgo the use of the electronic information system. The data stored in the electronic information system are to be deleted immediately upon the final and binding conclusion of the model case proceedings or upon all of the suspended proceedings coming to an end in some other way. The *Land* departments of justice determine the electronic information and communications system via which the stored data are available for retrieval and are responsible for the implementation of the electronic retrieval procedure. The *Länder* may determine a central electronic information and communications system transcending federal state boundaries.

Section 17 **Production of evidence**

(1) Upon application by the model case plaintiff, the higher regional court orders that a model case defendant or a third party is to produce evidence in their possession that is required for the model case plaintiff to tender evidence, provided the model case plaintiff

1. demonstrates to the satisfaction of the court that they have a claim set out in section 1 (1), and
2. specifies the evidence as exactly as is possible on the basis of the facts accessible at a reasonable expenditure of time, cost and effort.

(2) Upon application by a model case defendant, the higher regional court orders that the model case plaintiff, an interested party summoned or a third party is to produce evidence in its possession that is required for the model case defendant to defend against a claim set out in section 1 (1), provided the model case defendant specifies the evidence as exactly as is

possible on the basis of the facts accessible at a reasonable expenditure of time, cost and effort.

(3) No order as provided for in subsection (1) or (2) is to be handed down insofar as it would be disproportionate when taking account of the legitimate interests of the parties involved and of the third parties who are affected. A balanced consideration is to take account in particular of the following:

1. the extent to which the application is based on information and evidence that is accessible,
2. the scope of the evidence and the costs entailed by its being produced, especially if the evidence were to be presented by a third party,
3. it being ruled out that facts will be excessively investigated that are not relevant for the enforcement of a claim set out in section 1 (1) or for the defence against such a claim,
4. the protection of trade secrets and business secrets and other confidential information, and which measures are in place to protect them.

(4) Third parties are not obliged to produce evidence to the extent they are entitled to refuse to testify in accordance with sections 383 to 385 of the Code of Civil Procedure. Sections 386 to 390 of the Code of Civil Procedure apply accordingly.

(5) The evidence produced on the basis of an order issued in accordance with subsection (1) or (2) may be used against the obliged party or against a relative of said party designated in section 52 (1) of the Code of Criminal Procedure (*Strafprozessordnung*) in criminal proceedings or in proceedings governed by the Act on Regulatory Offences (*Gesetz über Ordnungswidrigkeiten*) for a deed committed prior to the production of an item of evidence only with the consent of the obliged party. This applies also if, in the context of examining a witness or a party to the proceedings, reference is made to the evidence. Sentences 1 and 2 are not to be applied in proceedings against enterprises.

Section 18

Withdrawal of the action brought; new determination of the model case plaintiff; termination of the proceedings

(1) The model case plaintiff and the interested parties summoned may withdraw the action they have respectively brought in the original proceedings within one month from service of the order suspending same, without the defendant's consent, even if a hearing for oral argument on the merits of the case already has been held.

(2) The model case plaintiff and the interested parties summoned may withdraw the action they have respectively brought in the original proceedings that have been interrupted or suspended in accordance with the present Act at any time without the defendant's consent, provided that

1. this action relates to the claims or legal relationships or establishment objectives and the cause of action of a representative action brought at a later time according to the Act on the Enforcement of Consumer Rights, and that
2. the model case plaintiff and the interested parties summoned are able to apply for their claims or legal relationships to be registered as part of said representative action.

An application for registration as part of a representative action that is declared, in the case governed by sentence 1, without being preceded by a withdrawal of an action brought, will not have binding effect under section 11 (3) sentence 1 of the Act on the Enforcement of Consumer Rights.

(3) The withdrawal of the action by an interested party summoned will not influence the further course of the model case proceedings.

(4) If, in the course of the model case proceedings, the model case plaintiff withdraws their action in the original proceedings, or if insolvency proceedings have been opened against the assets of the model case plaintiff, then the higher regional court will designate, at its equitably exercised discretion, a new model case plaintiff on the basis of section 9 (3) sentence 2.

(5) The same applies in the event that counsel representing the model case plaintiff requests that the model case proceedings be suspended for one of the following reasons:

1. the model case plaintiff has died,
2. the model case plaintiff no longer has the capacity to sue or to be sued,
3. the legal representative of the model case plaintiff has died or their power to represent the model case plaintiff has ceased to exist, without the model case plaintiff having gained the capacity to sue or to be sued,
4. a court has ordered the administration of the estate, or
5. reversionary succession has occurred.

(6) A model case ruling is not issued if the model case plaintiff, the model case defendants and the interested parties summoned state in congruent declarations that they intend to terminate the model case proceedings. In such event, the higher regional court will establish, by incontestable order, the termination of the model case proceedings. The higher regional court gives notice of the order without undue delay by publication in the Register of Model Case Proceedings.

Section 19 Model case ruling

(1) The higher regional court hands down by order the model case ruling based on hearings for oral argument. The model case ruling is served on the parties involved and the parties seeking registration of their claims. Notice by publication in the Register of Model Case Proceedings may take the stead of such service.

(2) The court hearing the original case takes the decision regarding the costs incurred in the course of the model case proceedings.

Section 20 Settlement proposal

(1) The model case plaintiff and the model case defendants may conclude a court settlement

1. by means of filing with the court a written settlement proposal serving to terminate the model case proceedings and the original proceedings, or
2. by accepting, by means of a written pleading to the court, a written settlement proposal from the court.

The interested parties summoned are to be given the opportunity to submit observations.

(2) As a rule, the settlement proposal is to also include provisions for the following matters:

1. regarding the allocation among the parties of the performance agreed,
2. regarding the proof of eligibility for performance to be provided by the parties involved,
3. regarding the due date of the performance, and
4. regarding the allocation of the costs of the model case proceedings among the parties involved.

Section 21 Approval and effectiveness of the settlement

- (1) The court will approve the settlement by incontestable order if, having due regard to the circumstances and facts as well as the status of the model case proceedings thus far and to the results obtained in hearing the interested parties summoned, it considers the settlement to be an adequate amicable resolution of the suspended legal disputes.
- (2) Once approval has been granted, the settlement no longer may be revoked.
- (3) The approved settlement becomes effective only if fewer than 30 percent of the interested parties summoned disengage from the settlement as provided for in section 22 (2).

Section 22

Service of the settlement, disengagement

- (1) The approved settlement is served on the interested parties summoned. Notice by publication in the Register of Model Case Proceedings may take the stead of such service.
- (2) Interested parties summoned may declare within one month from the date on which the settlement has been served that they disengage from the settlement. The disengagement must be declared in writing to the court; it may be recorded with the registry for the files of the court.
- (3) The interested parties summoned are to be instructed, with the service or notice by publication, of the following:
 1. the effect of the settlement,
 2. the right to disengage from the settlement and
 3. the requirements as to form the disengagement from the settlement must meet and the time limit for filing it.

Section 23

Complaint on points of law

- (1) A complaint on points of law is an available remedy against the model case ruling. The case is always of fundamental significance within the meaning of section 574 (2) number 1 of the Code of Civil Procedure. All parties involved are entitled to file a complaint on points of law.
- (2) The complaint on points of law may not be based upon the court hearing the original case having wrongfully issued a referral order or the higher regional court having wrongfully issued an opening order.
- (3) The court hearing the complaint on points of law notifies the other parties involved in the model case proceedings and the parties seeking registration of their claims that it has received a complaint on points of law, provided such complaint on points of law is admissible and has been submitted in compliance with the statutory requirements as to form and within the time limit established by law. The notification is to be served. Notice by publication in the Register of Model Case Proceedings may take the stead of such service.
- (4) The other parties involved may accede to the proceedings on the complaint on points of law within a statutory period of one month following service of the notification as provided for in subsection (3). The reasons on which the written pleading declaring accession to the complaint proceedings is based are to be submitted within one month following service of the notification as provided for in subsection (3); section 551 (2) sentences 5 and 6 of the Code of Civil Procedure applies accordingly.
- (5) Parties involved who accede to the complaint on points of law are entitled to assert means of attack or defence and to effectively take all actions in the proceedings, provided that their declarations and actions are not in opposition to the declarations made and actions taken by the party involved they intend to support.
- (6) If one of the parties involved chooses not to accede to the complaint on points of law or does not declare its intentions within the time period stipulated in subsection (4), then the model case proceedings will continue before the court hearing the complaint on points of law without consideration of that party.

(5) The decision on the complaint on points of law is served on the parties involved and the parties seeking registration of their claims. Notice by publication in the Register of Model Case Proceedings may take the stead of such service.

Section 24

Model case complainant

(1) If the model case plaintiff lodges a complaint against the model case ruling, then they will continue the model case proceedings at the level of jurisdiction competent for the complaint as the model case complainant. The court hearing the complaint determines, at its equitably exercised discretion, the model case respondent from among the model case defendants, doing so by order. Section 574 (4) sentence 1 of the Code of Civil Procedure is to be applied accordingly to the remaining model case defendants.

(2) If the complaint against the model case ruling is lodged not by the model case plaintiff and instead by one or several of the interested parties summoned, then the court hearing the complaint will determine that interested party summoned to be the model case complainant who was the first to lodge the complaint.

(3) If one or several of the model case defendants lodge a complaint against the model case ruling, then the court hearing the complaint will determine that model case defendant as the model case complainant who was the first to file a complaint. The model case plaintiff then will be the model case respondent. Section 574 (4) sentence 1 of the Code of Civil Procedure is to be applied accordingly to the interested parties summoned.

(4) If the model case complainant withdraws its complaint, then the court hearing the complaint will determine, in accordance with section 9 (3), a new model case complainant from among the parties that have acceded to the proceedings on the complaint on points of law on the part of the model case complainant, unless they likewise decline to continue the complaint on points of law.

Division 3

Effect of the model case ruling and of the settlement; costs

Section 25

Effect of the model case ruling

(1) The model case ruling is binding on the courts hearing the case in all original proceedings that have been suspended in accordance with section 10. Notwithstanding the stipulations of subsection (3), the model case ruling has effect for and against all parties involved in the model case proceedings regardless of whether the respective party involved has itself expressly asserted all of the facts established in the model case proceedings. This applies also if the model case plaintiff or the interested party summoned has withdrawn the action it has brought in the original proceedings, unless it has declared its withdrawal within the time limit stipulated in section 18 (1) or subject to the prerequisites set out in section 18 (2).

(2) The order is able to become final and binding insofar as a decision has been handed down on the establishment objectives of the model case proceedings.

(3) Following the final and binding conclusion of the model case proceedings, any allegation by the interested parties summoned made in their respective original proceedings vis-à-vis the model case plaintiffs to the effect that the model case plaintiff had conducted the model case proceedings inadequately will be heard only insofar as

1. they were prevented from asserting means of attack or defence due to the status of the model case proceedings given at the point in time at which their respective original proceedings were suspended, or because of statements made and actions taken by the model case plaintiff, or

2. means of attack or defence of which they were unaware were not asserted by the model case plaintiff or the model case defendant, either intentionally or due to gross negligence.

- (4) If a party involved in the model case proceedings submits the final and binding model case ruling in its original proceedings, then said original proceedings are recommenced.
- (5) The model case ruling also has effect for and against the parties who did not accede to the proceedings on the complaint on points of law.

Section 26

Effect of the settlement

- (1) The court establishes by incontestable order whether the approved settlement has come into effect. The court gives notice of the order without undue delay by publishing it in the Register of Model Case Proceedings. Upon notice being given by publication of the order establishing that the settlement is in effect, the settlement has effect for and against all parties involved unless they have declared their disengagement.
- (2) The settlement terminates the model case proceedings.
- (3) Unless a plaintiff has declared their disengagement, the court hearing the original case terminates, by order, the original proceedings suspended in accordance with section 10 and decides on the costs at its equitably exercised discretion, having due regard to the arrangement agreed in accordance with section 20 (2) number 4. The immediate complaint is an available remedy against the order. Prior to a decision being taken on the complaint, the opposing party is to be given the opportunity to make observations.
- (4) If a plaintiff claims failure to perform under the settlement, and if they are unable to pursue compulsory enforcement already based on the settlement, then the original proceedings are reopened upon the plaintiff's filing the corresponding application. If the action is then directed at performance of the settlement, then this amendment of the action is admissible.

Section 27

Subject matter of the decision on costs in the original proceedings

- (1) The costs incurred by the model case plaintiff and the interested parties summoned for the model case proceedings at first instance are considered part of the costs of the proceedings at first instance in the respective original proceedings.
- (2) The costs incurred by the model case defendants for the model case proceedings at first instance are considered to constitute a pro-rated share of the costs of the respective original proceedings at first instance unless the action has been withdrawn within the time limit stipulated in section 18 (1) or subject to the pre-requisites set out in section 18 (2).
- (3) The shares in the costs as provided for in subsection (2) are determined according to the ratio between the amount of the claim asserted by the respective plaintiff, insofar as said claim is affected by the establishment objectives of the model case, and the total amount of the claims asserted against the model case defendants in the original proceedings suspended pursuant to section 10, insofar as said claims are affected by the establishment objectives of the model case proceedings.
- (4) A claim is not to be taken into account in calculating the total amount under subsection (3) if the action has been withdrawn within the time limit stipulated in section 18 (1) or subject to the pre-requisites set out in section 18 (2).
- (5) Section 96 of the Code of Civil Procedure applies accordingly.

Section 28

Violation of the prerequisites for referring the matter to the higher regional court or for opening the model case proceedings

The appellate remedy against the decision terminating the proceedings handed down by the court hearing the original case in the original proceedings may not be based on the higher regional court not having been competent for the issuance of a model case ruling, nor may it be based on the prerequisites for issuing a referral order or an opening order not having been met.

Section 29

Decision on costs in proceedings on a complaint on points of law

(1) The costs of a complaint on points of law that has not met with success are to be borne, in accordance with the degree of their involvement, by the model case complainant and those interested parties summoned who acceded to the proceedings on the complaint on points of law on the part of the model case complainant.

(2) If the court hearing the complaint decides the case itself, then the costs of a complaint on points of law successfully lodged by a model case defendant are to be borne, in accordance with the degree of their involvement in the model case proceedings at first instance, by the model case plaintiff and by all interested parties summoned. If the appeal on points of law was successfully lodged by the model case plaintiff or by an interested party summoned, then the costs of the complaint are to be borne, in accordance with the degree of their involvement in the model case proceedings at first instance, by all model case defendants.

(3) In the event of the parties having prevailed for a part of their complaint, but not having been able to enforce another part of their complaint, section 92 of the Code of Civil Procedure applies accordingly. Where the costs are allocated proportionally, the court hearing the complaint may give equal weight to all of the establishment objectives constituting the subject matter of the dispute in the complaint on points of law if any other weighting is not possible or only possible based on a disproportionate expenditure of time and effort.

(4) If the court hearing the complaint reverses the model case ruling handed down by the higher regional court and refers the case to the court of lower instance for a new decision to be taken, then the higher regional court will decide at its equitably exercised discretion, concurrently with the issuance of the model case ruling, on who is to bear the costs of the proceedings on the complaint on points of law. In this context, the outcome of the model case proceedings is to be taken as the basis. Section 99 (1) of the Code of Civil Procedure applies accordingly.

(5) If the model case plaintiff and the interested parties summoned are ordered to pay costs of the proceedings on the complaint on points of law, then they are to reimburse the court fees paid by the model case defendants and the attorney's fees of the model case defendants on the basis, in each case, only of the value resulting from the claims they have asserted in their own original proceedings, insofar as such claims are affected by the establishment objectives of the model case proceedings.

Division 4

Transitional provisions and final provisions

Section 30

Transitional provisions

(1) The Act on Model Case Proceedings in Disputes under Capital Markets Law in the version applicable up until midnight of 1 November 2012 is to continue to be applied to model case proceedings in which hearings for oral argument already were held prior to 1 November 2012.

(2) The Act on Model Case Proceedings in Disputes under Capital Markets Law in the version applicable up until midnight of 19 July 2024 is to continue to be applied to model case proceedings originating from an application for the establishment of a model case filed prior to 20 July 2024.

Section 31

Evaluation

The present Act is to be evaluated five years after its entry into force.