

# PROPERTY CONTROL

ANNEX XIII

MILITARY GOVERNMENT — GERMANY  
UNITED STATES AREA OF CONTROL

## LAW NO. 59<sup>1</sup> (AMENDED 1)<sup>2</sup>

### Restitution of Identifiable Property

#### PART I

#### GENERAL PROVISIONS

##### ARTICLE 1

###### Basic Principles

1. It shall be the purpose of this Law to effect to the largest extent possible the speedy restitution of identifiable property (tangible and intangible property and aggregates of tangible and intangible property) to persons who were wrongfully deprived of such property within the period from 30 January 1933 to 8 May 1945 for reasons of race, religion, nationality, ideology or political opposition to National Socialism. For the purpose of this Law deprivation of property for reasons of nationality shall not include measures which under recognized rules of international law are usually permissible against property of nationals of enemy countries.

2. Property shall be restored to its former owner or to his successor in interest in accordance with the provisions of this Law even though the interests of other persons who had no knowledge of the wrongful taking must be subordinated. Provisions of law for the protection of purchasers in good faith, which would defeat restitution, shall be disregarded except where this Law provides otherwise.

#### PART II

#### CONFISCATED PROPERTY

##### ARTICLE 2

###### Acts of Confiscation

1. Property shall be considered confiscated within the provisions of this Law if the person entitled thereto has been deprived of it, or has failed to obtain it despite a well founded legal expectancy of acquisition, as the result of:

- A transaction *contra bonos mores*, threats or duress, or an unlawful taking or any other tort;
  - Seizure due to a governmental act or by abuse of such act;
  - Seizure as the result of measures taken by the NSDAP, its formations or affiliated organizations;
- provided the acts described in (a)-(c) were caused by or constituted measures of persecution for any of the reasons set forth in Article 1.

<sup>1</sup> The German text of this law shall be the official text and the provisions of par. 3 of Art. II of MG Law No. 4 shall not apply; (Law No. 22, Art. 94). Ed.

<sup>2</sup> This amendment extends the time for filing reports required by Art. 73 from 15 May 1945 until 15 August 1945. The amendment is effective 15 May 1945. Ed.

2. It shall not be permissible to plead that an act was not wrongful or *contra bonos mores* because it conformed with a prevailing ideology concerning discrimination against individuals on account of their race, religion, nationality, ideology or their political opposition to National Socialism.

3. Confiscation by a governmental act within the meaning of paragraph 1 (b) shall be deemed to include, among other acts, sequestration, confiscation, forfeiture by order or operation of law, and transfer by order of the State or by a trustee appointed by the State. The forfeiture by virtue of a judgment of a criminal court shall also be considered a confiscation by a governmental act, if such judgment has been vacated by order of an appropriate court or by operation of law.

4. A judgment or order of a court, or of an administrative agency, which, although based on general provisions of law, was handed down solely or primarily with the purpose of injuring the party affected by it for any of the reasons set forth in Article 1 shall be deemed a specific instance of the abuse of a governmental act. The abuse of a governmental act shall also include the procurement of a judgment or of measures of execution by exploiting the circumstance that the opponent was, actually or by law, prevented from protecting his interests by virtue of his race, religion, nationality, ideology or his political opposition to National Socialism. The Restitution Authorities (Restitution Agency, Restitution Chamber and Oberlandesgericht) shall disregard any such judgment or order of a court or administrative agency whether or not it may otherwise be appealed or reopened under existing law.

##### ARTICLE 3

###### Presumption of Confiscation

1. It shall be presumed in favor of any claimant that the following transactions entered into between 30 January 1933 and 8 May 1945 constitute acts of confiscation within the meaning of Article 2:

- Any transfer or relinquishment of property made during a period of persecution by any person who was directly exposed to persecutory measures on any of the grounds set forth in Article 1;
- Any transfer or relinquishment of property made by a person who belonged to a class of persons which on any of the grounds set forth in Article 1 was to be eliminated in its entirety from the cultural and economic life of Germany by measures taken by the State or the NSDAP.

2. In the absence of other factors proving an act of confiscation within the meaning of Article 2, the presumptions set forth in paragraph 1 may be rebutted by showing that the transferor was paid a fair purchase price. Such evidence by itself shall not, however, rebut the presumptions if the transferor was denied the free right of disposal of the purchase price on any of the grounds set forth in Article 1.

3. A fair purchase price within the meaning of this Article shall mean the amount of money which a willing buyer would pay and a willing seller would take, taking

into consideration, in the case of a commercial enterprise, the normal good will which such enterprise would have in the hands of a person not subject to persecutory measures referred to in Article 1.

##### ARTICLE 4

###### Power of Avoidance

1. Any transaction entered into by a person belonging to a class referred to in Paragraph 1 (b) of Article 3 within the period from 15 September 1935 (the date of the first Nuremberg laws) to 8 May 1945 may, because of the duress imposed on such class, be avoided by a claimant where such transaction involved the transfer or relinquishment of any property unless:

- The transaction as such and with its essential terms would have taken place even in the absence of National Socialism, or
- The transferee protected the property interests of the claimant (Article 7) or his predecessor in interest in an unusual manner and with substantial success, for example, by helping him in transferring his assets abroad or through similar assistance.

2. In determining under paragraph 1 (a) whether the transaction would have taken place even in the absence of National Socialism, the fact that

the transferor himself offered to sell the property to the transferee, or

the transferor received a fair purchase price (see Article 3, paragraph 3) the free right of disposal of which was not denied him on any of the grounds set forth in Article 1,

shall be considered by the Restitution Authority together with all other facts, but neither fact, either singly or in conjunction with the other, shall be sufficient to show that the transaction would have taken place even in the absence of National Socialism.

3. Similarly neither of these facts, either singly or in conjunction with the other, shall be sufficient to show that the claimant is estopped from exercising the power of avoidance by reason of his own previous conduct or that of his predecessor in interest.

4. The term "claim for restitution" as used in this Law shall be deemed to include all claims based on the right to exercise the power of avoidance. The exercise of the power of avoidance shall have the effect that the property transferred or relinquished pursuant to the voided transaction shall for the purposes of this Law be deemed to be confiscated property.

5. The filing of a claim for restitution shall, whether or not it is specifically stated, be deemed to be an exercise of the right of avoidance on behalf of the person entitled to exercise such right.

##### ARTICLE 5

###### Donations

Where a person persecuted for any of the reasons set forth in Article 1 has transferred property to another gratuitously within the period from 30 January 1933 to 8 May 1945, it shall be presumed that the transfer constituted a bailment or fiduciary relationship rather than a donation. This presumption shall not apply where the personal relations between the transferor and the recipient make it probable that the transfer constituted a donation based on moral considerations (*Anstandsschenkung*); no claims for restitution may be asserted in such cases.

##### ARTICLE 6

###### Bailment and Fiduciary Relationships

1. The provisions of Parts III to VII of this Law shall not apply to bailments and fiduciary agreements entered into in order to prevent damage to property threatened for any of the reasons set forth in Article 1, or to mitigate existing damage to property inflicted for such reasons.

2. The claimant (Article 7) may at any time terminate contracts and any other arrangements described in paragraph 1, such termination to be effective immediately, any contractual or statutory provisions to the contrary notwithstanding.

3. It shall not be an admissible defense for the bailee or fiduciary that the contracts and agreements described in paragraph 1 violated a statutory prohibition existing at the time of the transaction or enacted thereafter, or that a statutory or contractual form requirement had not been complied with, provided that this failure was attributable to the National Socialist regime.

##### PART III

#### GENERAL PROVISIONS ON RESTITUTION

##### ARTICLE 7

###### Person Entitled to Restitution (Hereinafter called Claimant)

The claim for restitution shall appertain to any person whose property was confiscated (hereinafter called Persecuted Person) or to any successor in interest.

##### ARTICLE 8

###### Successorship of Dissolved Associations

1. If a juridical person or unincorporated association was dissolved or forced to dissolve for any of the reasons set forth in Article 1, the claim for restitution which would have appertained to such juridical person and unincorporated association had it not been dissolved, may be enforced by a successor organization to be appointed by Military Government.

JULY 1949

# PROPERTY CONTROL

2. The provisions of paragraph 1 shall not be applicable to the organizations referred to in Article 9.

## ARTICLE 9

### Rights of Individual Partners

If a partnership, company or corporation organized under the Commercial Law, was dissolved or forced to dissolve for any of the reasons set forth in Article 1, the claim for restitution may be asserted by any associate (partner, member or shareholder). The claim for restitution shall be deemed to have been filed on behalf of all associates who have the same cause of action. The claim may be withdrawn or compromised only with the approval of the appropriate Restitution Authority. Notice of the filing of the claim shall be given to all other known associates or their successors in interest and to a successor organization competent according to Article 10. Within the limits of its authority the successor organization may represent in the proceedings any associate whose address is unknown, in accordance with the provisions of Article 11.

## ARTICLE 10

### Successor Organization as Heir to Persecuted Persons

A successor organization to be appointed by Military Government, shall, instead of the State, be entitled to the entire estate of any persecuted person in the case provided for in Section 1936 of the Civil Code (Estate of person dying without heirs). Neither the State nor any of its subdivisions nor a political self-governing body will be appointed as successor organization. The same shall apply to other rights in the nature of escheat based on any other provision of law.

## ARTICLE 11

### Special Rights of Successor Organizations.

1. If within six months after the effective date of this Law no petition for restitution has been filed with respect to confiscated property, a successor organization appointed pursuant to Article 10 may file such a petition on or before 31 December 1948 and apply for all measures necessary to safeguard the property.

2. If the claimant himself has not filed a petition on or before 31 December 1948, the successor organization by virtue of filing the petition shall acquire the legal position of the claimant. Only after that date, and not prior thereto, shall it be entitled to prosecute the claim.

3. The provisions of paragraphs 1 and 2 hereof shall not apply if, and to the extent to which, the claimant, in the period from 8 May 1945 to 31 December 1948, has delivered a waiver of his claim for restitution, in writing and in express terms, to the restitutor, the appropriate Restitution Authority, or the Central Filing Agency.

## ARTICLE 12

### Obligation of Successors in Interest to Give Information

1. If so ordered by the appropriate Restitution Authority a claimant who acquired the claim for restitution directly or indirectly from the persecuted person shall submit, if known to him, either the address of his predecessors in interest, in particular of the persecuted person, or of his heirs, or execute an affidavit to the effect that he does not know the present address or any data from which it might be ascertained.

2. The successor organization appointed pursuant to Article 10 shall submit the address of the person entitled to restitution, provided it is known to it, or such data known to it which might serve to locate this person, or an affidavit signed by its legal representative to the effect that it knows neither the address of the person entitled to restitution nor any data which might serve to locate this person.

## ARTICLE 13

### Designation of Successor Organizations

Regulations to be issued by Military Government will provide for the manner of appointment of successor organizations, their obligations to their persecutees charges, and any further rights or obligations they may have under Military Government or German law.

## ARTICLE 14

### Persons Liable to Make Restitution

The person liable to make restitution (hereinafter referred to as restitutor), within the meaning of this Law, is the present possessor of confiscated tangible property or the present holder of a confiscated intangible interest, or of an aggregate of tangible and intangible property.

## ARTICLE 15

### Effect of an Adjudication of a Restitution Claim

1. Unless otherwise provided in this Law, a judgment directing restitution shall have the effect that the loss of the property shall be deemed not to have occurred and that after-acquired interests by third persons shall be deemed not to have been acquired.

2. Any adjudication of a restitution claim shall be effective for and against any person who participated in the proceeding or who, being entitled to participate, was duly served.

## ARTICLE 16

### Alternative Claim for Additional Payment

If he relinquishes all other claims under this Law the claimant may demand, from the person who first acquired the property, payment of the difference between the price

received and the fair purchase price of the property as defined in Article 3, paragraph 3. Proper interest shall be added to this amount in accordance with the provisions on profits contained in this Law.

2. The demand for payment shall not be permissible:

- (a) after the property has been restored to the claimant by a judgment no longer subject to appeal; or
- (b) after the Restitution Agency or Chamber has rendered a decision on the merits; or
- (c) after the claimant and the restitutor have reached an amicable agreement with regard to the restitution claim.

## ARTICLE 17

### Valuation

1. Where the value of property is relevant according to the provisions of this Law, increases in the price caused by the decrease of the purchasing power of money shall not be considered an enhancement in the value.

2. Future implementing regulations may provide for the valuation of property which, because not now determinable, is at present not subject to the property tax. The provision of Article 27, paragraph 2 shall remain unaffected.

## PART IV

### LIMITATIONS ON THE RIGHT TO RESTITUTION

## ARTICLE 18

### Expropriation

1. Confiscated property which, after the time of confiscation, was expropriated for a public purpose, or sold or assigned to an enterprise for the benefit of which the right of expropriation could be exercised, shall not be subject to restitution if on the effective date of this Law the property is still used for a public purpose, and if such purpose is still recognized as lawful.

2. If property is not subject to restitution for the reasons set forth in paragraph 1, the present owner shall compensate the claimant adequately to the extent to which his claims pursuant to Article 29 et seq. infra, do not result in such compensation.

## ARTICLE 19

### Protection of Ordinary and Usual Business Transactions

Except as provided in Articles 20 and 21, tangible personal property shall not be subject to restitution if the present owner or his predecessor in interest acquired it in the course of an ordinary and usual business transaction in an establishment normally dealing in that type of property. However,

the provisions of this Article shall not apply to religious objects or to property which has been acquired from private ownership if such property is an object of unusual artistic, scientific, or sentimental personal value, or was acquired at an auction, or at a private sale in an establishment engaged to a considerable extent in the business of disposing of confiscated property.

## ARTICLE 20

### Money

Money shall be subject to restitution only if at the time he acquired the money the restitutor knew or should have known under the circumstances that it had been obtained by way of confiscation.

## ARTICLE 21

### Bearer Instruments

1. Bearer instruments shall not be subject to restitution if the present holder proves that, at the time he acquired the instrument, he neither knew nor should have known under the circumstances that the instrument had been confiscated at any time. Unless special circumstances indicate otherwise, good faith shall be presumed within the scope of this provision, if such property was acquired in the course of ordinary and usual business transactions, especially on the stock exchange, and if the transaction did not involve a dominant participation.

2. The provisions of paragraph 1 shall also apply to interests in bearer instruments deposited in a central account (Sammelverwahrung).

3. Bearer instruments and interests in bearer instruments shall, however, be unconditionally subject to restitution if they represent:

- (a) a participation in an enterprise with a small number of members, such as a family corporation; or
- (b) a participation in an enterprise the shares of which had not been negotiated on the open market; or
- (c) a dominant participation in an enterprise as to which it was known, generally or in the trade, that a dominant participation was held by persons who belonged to one of the classes described in Article 3, paragraph 1 (b); or
- (d) a dominant participation in a business establishment which was registered under the Third Ordinance to the Reich Citizen Law (Reichsbürgergesetz) of 14 June 1938 (RGBl. I, p. 627).

4. For the purpose of subsections (c) and (d) of paragraph 3, a participation shall be deemed to be dominant if it permitted the exercise of a considerable amount of influence upon the management of the business enterprise either by itself or on the basis of a working agreement which existed prior to or at the time of the confiscation.

## ARTICLE 22

### Restitution in Event of Changes in the Legal or Financial Structure of an Enterprise

If a participation of the type described in Article 21, paragraph 3 had been confiscated and if the enterprise had been dissolved or merged into, or consolidated with, or transformed into another enterprise, or had been changed in any other way in its legal or financial structure, or if its assets had been transferred wholly or in part to another enterprise, the claimant may demand that he be given an appropriate share in the modified or newly formed enterprise or in the enterprise which had acquired wholly or in part the assets of the original enterprise, thereby restoring as far as possible his original participation and the rights incident thereto.

## ARTICLE 23

### Enforcement of the Principles Set Forth in Article 22

The Restitution Chamber shall take all measures necessary and appropriate to effectuate the rights granted to the claimant under Article 22, provided his claims under Article 29 et seq. do not result in sufficient indemnification within the purview of Article 22. To that end the Restitution Chamber shall order, if necessary, the cancellation, new issue or exchange of shares, participation certificates, interim certificates, and other instruments evidencing a participation; or the establishment of a partnership relation between the claimant and the enterprise as described in Article 22, and it shall order the performance of any act required by law in order to effectuate those rights. These measures shall be taken primarily at the expense of those who are liable to make restitution according to the principles of this Law. If such measures would affect any other shareholder they shall be ordered only to the extent to which such other shareholder benefited directly or indirectly from the confiscation in connection with the facts as described in Article 22; or if the enterprise itself would be liable to make restitution or to damages under this Law or under the generally applicable rules of law, especially on the principle of respondent superior.

## ARTICLE 24

### Other Enterprises

The provisions of Articles 22 and 23 shall be applicable if the object of the confiscation was a business owned by an individual; or a participation in a partnership or a limited partnership; or a personal participation in a limited partnership corporation (Kommanditgesellschaft auf Aktien); or a share in an association with limited liability (Gesellschaft mit beschränkter Haftung) or in a cooperative; or a share of a similar legal nature.

## ARTICLE 25

### Service

Insofar as it may become necessary pursuant to Articles 22 to 24 to make service on any unknown associate or on any associate whose present address is unknown, service shall be made by publication pursuant to Article 61.

## ARTICLE 26

### Delivery of a Substitute in Lieu of Restitution

1. Where subsequent to the confiscation the object otherwise subject to restitution has undergone fundamental changes considerably enhancing its value, the Restitution Chamber may order the delivery of an adequate substitute in lieu of restitution; in determining the adequacy of the substitute the Restitution Chamber shall consider the value of the property at the time of the confiscation and the equitable interests of the parties. The claimant may, however, demand the assignment of an appropriate share in the property unless the restitutor offers a substitute of similar nature and of like value. The claimant may avail himself of the provisions of the first and second sentence above, even if the fundamental change did not result in a considerable enhancement of the value of the object.

2. The restitutor shall not be entitled to benefits of the provisions of paragraph 1 if he had acquired the object by way of an aggravated confiscation within the meaning of Article 30, or if he knew or should have known under the circumstances at the time the fundamental changes were made that the object at any time had been obtained by way of an aggravated confiscation.

3. Where the restitutor has combined the object subject to restitution with another object as an essential part thereof, he may separate the latter object and appropriate it. In this case, he shall restore the object to its former condition at his own expense. Where the claimant obtained possession of the combined objects prior to the separation he shall be required to permit the separation; he may, however, withhold his consent unless security is given to save him harmless from any damage resulting from the separation. The restitutor shall not have the privilege of separation if he is not entitled to compensation for expenditures according to the provisions of this Law; or if he is indemnified at least for the value which the separable part of the object would have to him after separation.

4. In determining whether property has been enhanced in value within the meaning of paragraph 1, sentence 1, only such enhancement in value for which the restitutor may claim compensation under the provisions of this Law shall be taken into account.

## ARTICLE 27

### Restitution of an Aggregate of Properties

1. The claimant may not limit his demand for restitution to separate items out of an aggregate of properties

if the aggregate can be returned as a whole and if the limitation of the restitution to separate items would inequitably prejudice the restitutor or the creditors.

2. The claimant may refuse to include in his petition any claim against a public agency falling within the scope of Article 1 of the Laws on Judicial Aid for the Equitable Settlement of Contracts, as uniformly enacted, with the consent of the Länderrat, in Bavaria, Hesse, and Württemberg-Baden, where such claims are among the assets of a commercial enterprise or of any other aggregate of property subject to restitution.

## ARTICLE 28

### Protection of Debtors

Until notified of the filing of the petition for restitution, the debtor of a confiscated claim may discharge his obligation by payment to the restitutor. The same rule shall apply in favor of a debtor who prior to the entry in the Land Title Register (Grundbuch) of an objection to its correctness or a notice of restitution makes a payment to a restitutor entered in the Land Title Register.

## PART V

### COMPENSATION AND ANCILLARY CLAIMS

## ARTICLE 29

### Subrogation

1. Upon request of the claimant, a former holder of confiscated property who would be liable to restitution if he were still holding it shall turn over any compensation or assign any claim for indemnification which he might have acquired in connection with the event preventing the return of such property. Whatever the claimant receives from one of several restitutors shall be credited against the claims he holds against the remaining ones.

2. The same shall apply with respect to any compensation or any claim for compensation which the holder or former holder of confiscated property acquired in connection with deterioration of such property.

3. In case of the confiscation of a business enterprise the claim for restitution shall extend to the assets acquired after the confiscation, unless the restitutor shows that such assets were not paid for with funds of the enterprise. If the purchase was paid for out of the funds of the enterprise, a corresponding increase in the value of the business shall be deemed to constitute profits within the meaning of Articles 30, 32, and 33. This rule shall be applicable also to any other aggregate of property. If the purchase was not made with funds of the enterprise the restitutor shall have the privilege of separation as set forth in Article 26, paragraph 3, provided, however, that the claimant shall have the privilege of taking over the property pursuant to Article 26, paragraph 3, third sentence only if otherwise the operation of the enterprise would be hampered considerably.

4. Any claims of the claimant pursuant to Article 30 et seq. which are more extensive shall remain unaffected.

## ARTICLE 30

### Strict Liability

1. Any person who has obtained the confiscated property from the persecuted person through a transaction contra bonos mores or as the result of threats made by him or on his behalf, or by an unlawful taking or other tort (hereinafter referred to as aggravated confiscation), shall be liable under the general rules of the Civil Code governing tort liability for damages arising from failure to return such property on the ground of impossibility or from deterioration and also for surrender of profits and for any other indemnification provided therein.

2. The possessor or former possessor of confiscated property shall be subject to the same liability if he knew or should have known under the circumstances (within the meaning of Section 259 of the Penal Code) at the time he acquired the property that it had been obtained at any time by way of an aggravated confiscation.

3. If the claimant is entitled to profits he may demand that they be computed on the basis of the usual rate of profits for that particular type of property, such rate to be specified by an implementing regulation, unless it is manifest in an individual case that these standard rules are substantially inappropriate.

## ARTICLE 31

### Mitigated Liability

1. Any holder or former holder of confiscated property who acquired the property by means of a confiscation not constituting an aggravated confiscation within the meaning of Article 30, paragraph 1, (hereinafter referred to as simple confiscation) shall be liable in damages if he is unable to return the property or if it has deteriorated, unless he can prove that he has exercised due diligence.

2. Any holder or former holder shall be similarly liable from the time when he knew, or should have known under the circumstances, that the property at any time had been obtained by way of a confiscation within the meaning of this Law.

3. Where real property or any interest in the nature of real property has been confiscated, a possessor or former possessor shall be liable according to paragraph 1, unless he shows that because of unusual circumstances he neither knew, nor should have known under the circumstances that the property at any time had been obtained by way of confiscation within the meaning of this Law.

## ARTICLE 32

### Return of Profits in Case of Simple Confiscation

1. Any holder or former holder of confiscated property who at any time obtained such property by way of a simple



confiscation shall pay the claimant adequate compensation for the period of time in which such holder enjoyed the profits of the property. Article 31, paragraphs 2 and 3, shall be applicable.

2. The amount of the net profits of the property less the amount of an adequate remuneration for management of the property by the restitutor shall be deemed to be an adequate compensation. The remuneration for management shall not exceed 50% of the net profits drawn from the property, except where relatively small amounts are involved. Profits which the restitutor willfully diminished or neglected to draw shall be added. Taxes paid on the net income drawn from the property and the interest on the purchase price paid by the restitutor shall adequately be taken into consideration. Paragraph 3 of Article 30 shall be applicable.

## ARTICLE 32

### Release from Liability

1. A holder or former holder of confiscated property shall not be liable in damages if he is unable to return the property or because the property has deteriorated, nor shall he be liable to account for profits, as long as he neither knew, nor should have known under the circumstances, that the property at any time had been obtained by way of confiscation. The provisions of Article 31, paragraph 3, shall remain unaffected.

2. Profits which under rules of good husbandry are not to be regarded as income from such property shall be returned in any event, pursuant to the rules of the Civil Code on unjust enrichment.

3. Under no circumstances shall remuneration for management be paid for a period for which the claimant cannot claim an accounting for profits.

## ARTICLE 34

### Compensation for Expenditures

1. Ordinary expenses for the maintenance of property subject to restitution shall not be refunded; they may, however, be taken into consideration in determining the net profits under Articles 30 and 32.

2. For other necessary expenditures compensation may be demanded to the extent that such expenditures should not have been written off in the course of proper management of the confiscated property.

3. For other than necessary expenditures the restitutor may demand compensation only to the extent that such expenditures should not have been written off in the course of proper management of the confiscated property and only to the extent to which the value of the property is still enhanced by such expenditures at the time of the restitution. In this case the liability of the claimant shall be limited to the restituted property and any other compensation to which he is entitled under this Law. The exercise of the claimant's privileges of limiting his liability shall be governed by Sections 1990 and 1991 of the Civil Code.

4. A person who at any time obtained the confiscated property by way of an aggravated confiscation may demand compensation only for necessary expenditures under the conditions set forth in paragraph 2 hereof and under the further condition that such expenditures were in the claimant's interest. The same rule shall apply to any holder or former holder of the confiscated property from the time when he knew, or should have known under the circumstances, that the property at any time has been obtained by way of an aggravated confiscation.

5. Where the provision of Article 26, paragraph 1, are found to be applicable, no compensation can be claimed for any expenditures which resulted in a fundamental change substantially enhancing the value of the property within the meaning of Article 26, paragraph 1.

## ARTICLE 35

### Duty to Furnish Particulars

The parties shall be liable to furnish particulars, where such information is necessary to effectuate claims under this Law. Sections 259 to 261 of the Civil Code shall be applicable.

## ARTICLE 36

### Title to Increase

The provisions of the Civil Code shall be applicable to the acquisition of title to the produce and other increase of confiscated property. Where the possessor or former possessor did not obtain the property by way of an aggravated confiscation, he shall be deemed to be the owner of the produce and other increase of the confiscated property, without prejudice, however, to his obligation to return any profits.

## PART VI

### CONTINUED EXISTENCE OF INTERESTS AND LIABILITY FOR DEBTS

## ARTICLE 37

### Continued Existence of Interests

1. Any interest in the confiscated property shall continue to be effective to the extent to which it existed prior to the act constituting the confiscation, and insofar as it has not been extinguished or discharged thereafter. The same shall apply to any interest created at a later date to the extent to which the total amount of all claims (principal and accessory claims) does not exceed the total amount of all such claims as they existed prior to the act constituting the confiscation (hereinafter referred to as limit of encumbrances). An interest which does not involve

payment of money shall continue to be effective only where an interest of the same kind already existed prior to the confiscation and the interest subsequently created is not more burdensome than that existing at the time of the confiscation, or where such interest would have come into existence even though the property had not been confiscated.

2. The limit of encumbrances shall be raised to the extent to which any interest of a third person results from expenditures for which the restitutor may claim compensation pursuant to Article 34. Any other interest of a third person which exceeds the limit of encumbrances set forth in paragraph 1 of this Article and which results from expenditures for which the restitutor cannot claim compensation pursuant to Article 34 shall be extinguished, unless at the time of the restitution the value of the object is still increased correspondingly as the result of the expenditure and the third person shows that he neither knew, nor should have known under the circumstances that the property had been obtained by way of an aggravated confiscation.

3. Interests in the property subject to restitution which, in connection with the confiscation, had been created in favor of the claimant or his predecessor in interest shall continue to be effective irrespective of the limit of encumbrances. This shall be without prejudice to any claim of the claimant for the restitution of such interests in case they had been confiscated.

4. Interests resulting from the conversion of the Home-Rent Tax, with the exception of overdue payments, shall continue to be effective irrespective of the limit of encumbrances.

## ARTICLE 38

### Devolving of Encumbrances

If real property has been encumbered by any transaction, legal act, or any governmental act constituting a confiscation within the meaning of this Law, such an encumbrance shall devolve on the claimant and shall not be considered in computing the limit of encumbrances as provided in Article 37. This shall apply particularly to encumbrances which were entered in the Land Title Register (Grundbuch) in connection with the Capital Flight Tax, the Property Tax on Jews and similar enactments.

## ARTICLE 39

### Personal Liability

If, prior to the confiscation of real property, the claimant or his predecessor in interest was personally liable in respect of any debt which was secured by a mortgage, land charge (Grundschild) or annuity charge (Rentenschuld) on the real property, he shall assume personal liability at the time of recovery of title to the extent to which the mortgage, land charge or annuity charge continues to be effective under the preceding provisions. The same shall apply in case of obligations in regard to which the restitutor may demand to be released pursuant to Article 34 of this Law and Section 237 of the Civil Code. The same shall apply also in the case of liabilities which continue to be effective according to Article 37, paragraph 1, second sentence, and which replace charges for which the claimant or his predecessor in interest had been personally liable.

## ARTICLE 40

### Demand for Assignment

1. The claimant may demand the assignment to him, without compensation, of any mortgage, land charge or annuity charge against real property subject to restitution which is held by any holder or former holder of such property who at any time obtained the property by way of an aggravated confiscation. This shall not apply to the personal debt on which the mortgage is based. Any interest created prior to the confiscation shall be subject to the provisions of Article 46, paragraph 3.

2. The provisions of this Article shall not apply to encumbrances created pursuant to the provisions of this Law.

## ARTICLE 41

### Liability for Debts of a Business Enterprise

1. If the claimant recovers a business enterprise or another aggregate of properties, the creditors holding debts incurred in the operation of the enterprise or obligations with which the aggregate of properties has been encumbered may, from the time of the recovery, also assert against the claimant such claims as existed at such time.

2. In this case the liability of the claimant shall be limited to the restituted property and any other compensation to which he is entitled under this Law. The claimant's privilege of limiting his liability shall be governed by Sections 1990 and 1991 of the Civil Code.

3. The claimant shall not be liable under paragraphs 1 and 2 to the extent to which the total amount of liabilities exceeds the limit of encumbrances to be computed in an analogous application of Article 37, and insofar as the excess in the amount of liabilities is not covered by an excess of assets resulting from the application of Article 29, paragraph 3. In such case the Restitution Chamber, in its equitable discretion, shall take the requisite measures in analogous application of Article 37. Debts held by creditors who neither knew nor should have known under the circumstances that the business enterprise or other aggregate of properties at any time had been obtained by way of confiscation within the meaning of this Law shall have preference. Liabilities of equal priority shall be reduced pro rata, if necessary.

## ARTICLE 42

### Leases

1. If a restitutor or any former possessor has leased real property to a third person, the claimant may terminate the



# PROPERTY CONTROL

lease by giving notice, the termination to become effective on the date prescribed by Law. Such notice cannot be given until the Restitution Authority has determined that the property is subject to restitution, and such determination is no longer subject to appeal, or until the fact that the property is subject to restitution has been acknowledged in any other way. The notice must be given within three months from such date, or from the date when the claimant in fact takes possession of the real property, if he takes possession at a later date.

2. The provisions of the Law for the Protection of Tenants (Mieterschutzgesetz) in the version of 15 December 1942 (RGBl. I, page 712) shall not apply to any restitutor or his predecessor in interest who obtained the property subject to restitution by way of an aggravated confiscation or who, at the time he acquired the property, knew, or should have known under the circumstances, that the property at any time had been obtained by way of an aggravated confiscation. The provisions of the Law for the Protection of Tenants shall also not apply insofar as the claimant is in need of adequate dwelling space for himself or his close relatives. Similarly, the Law for the Protection of Tenants shall not apply if dwelling space, which at the time of the confiscation or of the filing of the petition for restitution was used in connection with the operation of a business enterprise subject to restitution, is needed for the continued operation of such enterprise. The provisions of the Law for the Protection of Tenants shall not be applicable to space used for commercial purposes if the claimant has a legitimate interest in the immediate return of such space.

3. Leases entered into with the approval of Military Government may be cancelled only with the consent of Military Government.

## ARTICLE 43

### Employment Contracts

Irrespective of any contractual provision to the contrary, the claimant may terminate any existing employment contract made since the confiscation by the restitutor or any former holder of a business enterprise subject to restitution by giving notice as provided in a collective labor-agreement or if the absence thereof within the statutory period; this shall not prejudice the right of the claimant to terminate an employment contract for just cause without notice. Notice cannot be given until the Restitution Authorities have determined that the enterprise is subject to restitution and such determination is no longer subject to appeal, or until the fact that an enterprise is subject to restitution has been acknowledged in some other way. Such notice must be given within three months from such date, or from the time when the claimant in fact obtains possession of the enterprise, if he obtains possession at a later date.

## PART VII

### CLAIMS OF THE RESTITUTOR FOR REFUND AND INDEMNIFICATION

## ARTICLE 44

### Obligation to Refund

1. In exchange for the restitution of the confiscated property the claimant shall refund to the restitutor the consideration received by him, in kind if possible. This amount shall be increased by the amount of any encumbrance against the confiscated property existing at the time of confiscation and discharged thereafter, unless such encumbrance has been replaced by another encumbrance which continues to be effective, and unless the discharged encumbrance was created as the result of a confiscation within the meaning of this Law.

2. Where several items of property were confiscated for a consideration consisting of a lump sum, but restitution takes place in regard to some of these items only, the lump sum shall be reduced pro rata, in the ratio which at the time of the confiscation existed between the lump sum and the value of those items to be restituted.

3. If at the time of the confiscation the claimant, for any of the reasons set forth in Article 1, did not obtain, wholly or in part, the power freely to dispose of the consideration received, the refund shall be diminished by a like amount. The claimant shall assign to the restitutor any claim for indemnification to which he may be entitled with respect to this amount.

4. Under no circumstances shall the claimant be required to refund any amount exceeding the value of the confiscated property at the time of restitution, less the value of the encumbrance recognized against the property.

## ARTICLE 45

### Equitable Lien

The restitutor shall have no equitable lien (Zurückbehaltungsrecht) for his claims insofar as such lien would substantially delay the speedy restitution of the confiscated property. The same shall apply to any execution or attachment of the confiscated property based on any counterclaim.

## ARTICLE 46

### Judicial Determination of Terms of Payment

1. The Restitution Authorities shall determine the terms of payments to be made in connection with restitution, taking into consideration the purpose of this Law, the debtor's ability to pay, and existing statutory prohibitions and limitations on payments.

2. In cases involving the restitution of real property and interests in the nature of real property, the claimant may

demand that an adequate period not exceeding ten years be allowed for the payment of the refund and expenditures, provided that a refund-mortgage bearing 4% interest be executed on the property in favor of the restitutor. The terms shall be specified by the Restitution Authorities upon application.

3. In cases provided for in Article 34, paragraph 3, and Article 37, paragraph 2, the Restitution Authorities shall determine the maturity dates of debts and the terms of payment in such a way that the restitution of the confiscated property will not be prejudiced under any circumstances nor its enjoyment by the claimant unduly impaired.

## ARTICLE 47

### Claims for Indemnification

1. Claims for indemnification which the restitutor may have against any of his predecessors in interest shall be governed by the rules of the Civil Law. The liability to make restitution shall be deemed to constitute a defect in title within the meaning of the Civil Code, Section 439, paragraph 1 of the Civil Code shall not be applicable.

2. In case of restitution of real or tangible personal property, any claim provided in paragraph 1 may be asserted not only against the original party to the contract but also against any predecessor in interest who was not in good faith at the time he acquired the property. Such predecessors in interest shall be liable as joint debtors. They shall not be liable, if the restitutor himself was not in good faith.

## ARTICLE 48

### Lien of Third Persons on Claims of the Restitutor

1. Any interest in confiscated property which ceases to be effective pursuant to Article 37 shall remain a lien on any claim which the restitutor may have for payment of expenditures, refund of consideration and for indemnification under Articles 34, 44 and 47; and on the proceeds which the restitutor obtains on the basis of such claims.

2. This provision shall not apply in favor of such persons who by granting loans have aided an aggravated confiscation.

## PART VIII

### GENERAL RULES OF PROCEDURE

## ARTICLE 49

### Basic Principles

1. The restitution proceedings shall be conducted in such a manner as to bring about speedy and complete restitution. The Restitution Authorities may deviate in individual cases from procedural rules declared applicable by this Law, if to do so will serve to accelerate restitution, provided that such deviation does not impair complete investigation of the facts or the legal right to a fair hearing.

2. In ascertaining the facts of the case the Restitution Authorities shall bear fully in mind the circumstances in which the claimant finds himself as a result of measures of persecution for the reasons set forth in Article 1. This shall particularly apply where the producing of evidence has been rendered difficult or impossible through the loss of documents, the death or unavailability of witnesses, the residence abroad of the claimant, or similar circumstances. Affidavits of the claimant and his witnesses shall be admitted. This shall apply even though the affiant died after signing the affidavit.

## ARTICLE 50

### Right of Succession and Foreign Law

1. Any person who bases any claim upon a right of succession on death must establish such right.

2. Foreign law must be proved so far as it is unknown to the Restitution Authorities.

## ARTICLE 51

### Presumption of Death

Any persecuted person, whose last known residence was in Germany or a country under the jurisdiction of or occupied by Germany or its Allies and as to whose whereabouts or continued life after 8 May 1945 no information is available, shall be presumed to have died on 8 May 1945; however, if it appears probable that such a person died on a date other than 8 May, the Restitution Authorities may deem such other date to be the date of death.

## ARTICLE 52

### Safeguarding

1. The Restitution Authorities shall, if the situation so requires, safeguard confiscated property in a suitable manner. They may to that end issue temporary injunctions (einstweilige Verfügung) or restraining orders (Arrest), either upon their own motion or upon application. Such injunctions or orders shall be modified or vacated if the property can be safeguarded by any other measures than those taken, or if there is no further need for their continuation.

2. The provisions of the Code of Civil Procedure on "Arrest und einstweilige Verfügung", as amended or as hereafter amended, shall be applicable.

## ARTICLE 53

### Trustee

1. Where supervision of the confiscated property is necessary, a trustee shall be appointed provided no other authority exercises jurisdiction over such property.

# PROPERTY CONTROL

2. Unless provided otherwise by implementing regulation, the rules concerning the Administration of Blocked Property shall apply to the appointment and supervision of a trustee.

## ARTICLE 54

### Jurisdiction of Other Authorities to Take Measures as Set Forth in Articles 52 and 53

Where the safeguarding measures described in Articles 52 and 53 are within the jurisdiction of another agency, the Restitution Authorities will request the appropriate agency to take such measures.

## PART IX

### FILING OF CLAIMS.

#### ARTICLE 55

##### Central Filing Agency

1. A Central Filing Agency for the filing of petitions for restitution will be established under regulations to be issued by Military Government.
2. The Central Filing Agency shall transmit the petition to the appropriate Restitution Agency or Agencies.

#### ARTICLE 56

##### Form Requirements and Period of Limitation for Filing Claims

1. A petition for restitution pursuant to this Law shall be submitted to the Central Filing Agency in writing on or before 31 December 1948. Details as to the form of filing will be provided in regulations to be issued by Military Government.
2. The petition shall be substantiated by documents or affidavits.
3. The petition may be effectively filed by any one of several co-claimants.
4. Any petition, filed by a person who is not entitled to restitution of the property, shall be deemed to have been effectively filed in favor of the true claimant, or where Articles 8, 10 and 11, are applicable, in favor of the successor organizations mentioned therein. The same shall apply to the filing of petition by any such successor organization.

#### ARTICLE 57

##### Relation to Other Remedies

Unless otherwise provided in this Law, any claim within the scope of this Law may be prosecuted only under the provisions and within the periods of limitation, set forth in this Law. However, any claim based on tort, outside the scope of this Law, may be prosecuted in the ordinary courts.

#### ARTICLE 58

##### Contents of Petition to be Filed

1. The petition shall contain a description of the confiscated property. Time, place and circumstances of the confiscation shall be stated as exactly as is possible under the circumstances. If a claim is made for the payment of money, the sum demanded shall be specified if feasible; the basis for the claim shall be substantiated.
2. So far as known to the claimant, the petition shall contain the name and address of the restitutor, the names and addresses of all persons having or claiming to have an interest in the property, lessees and tenants, if any, and a statement as to all encumbrances existing at the time of the confiscation of the property.
3. The Central Filing Agency or the Restitution Authorities may request the claimant to supplement his petition by a statement containing the data set forth in paragraphs 1 and 2. They may further require the claimant to swear to his statement.
4. If the claimant does not have his domicile or residence in one of the four Zones of Occupation of Germany or in the City of Berlin, and if he has not appointed there an attorney authorized to accept service of legal papers, he may nominate in his petition a person domiciled there, authorized to receive such papers. If he fails to nominate such a person, the Restitution Agency shall do so and notify the claimant of the appointment.
5. After a petition has been filed, a receipt shall be issued by the Central Filing Agency notifying the claimant of the Restitution Agency or Agencies to which the petition has been transmitted pursuant to Article 55, paragraph 2.
6. The period of limitation provided for in Article 56, paragraph 1, shall be deemed to have been complied with by the filing of a written petition with the Central Filing Agency, although it is incomplete or in improper form.

#### ARTICLE 59

##### Venue

1. Any petition for restitution shall be transmitted by the Central Filing Agency to the Restitution Agency of the district in which the property subject to restitution is located. If it appears that a petition has been transmitted to a Restitution Agency which lacks jurisdiction, such petition shall be referred by such Restitution Agency to the Restitution Agency having jurisdiction. The order of reference shall be binding on the Agency to which the petition has been referred.
2. An implementing regulation may provide for additional rules on venue, especially of claims for compensation and ancillary claims.

#### ARTICLE 60

##### Jurisdiction of Subject Matter

The Restitution Authorities shall have jurisdiction of the subject matter irrespective of whether under any other

law a claim for restitution would come within the jurisdiction of any ordinary, administrative, or other court, or whether no court whatsoever would have jurisdiction.

#### ARTICLE 61

##### Notice of Claim

1. The Restitution Agency shall give notice of the petition by formal service on the parties concerned requiring that an answer be filed within two months. Parties concerned shall be deemed the restitutor, persons holding interests in rem, lessees or tenants of the confiscated property, as well as any other person the claimant might demand to be joined in the proceedings. If the German Reich, a Land, a former Land, the former NSDAP or one of its formations or affiliated organizations is a party concerned, service shall be made upon the State Minister of Finance. In the cases described in sentence 3 the State shall be authorized to join the proceedings as a party in interest.
2. Where the restitutor or his present address is unknown or where it appears from the petition that any unknown third person may have an interest in the confiscated property, the Restitution Agency shall cause the service by publication of the petition; the restitutor and the unknown third persons shall be requested thereby, within two months, to declare their interests together with proof thereof with the Restitution Agency. Service by publication shall be made pursuant to Section 204, paragraph 2, of the Code of Civil Procedure as amended by Control Council Law No. 38 in the form prescribed for a summons. Service shall be deemed to be effective one month after publication in the periodical specified in Section 204, paragraph 2, of the Code of Civil Procedure.
3. Upon service of the petition the case shall be deemed to be pending (rechtshängig).
4. When the claim for restitution affects real property or an interest in the nature of real property, the Restitution Agency shall request that an entry in the Land Title Register be made to the effect that a claim for restitution has been filed. (Notice of restitution, Rückerstattungsvermerk.) The notice of restitution shall be effective against any third person.
5. The provisions of the Code of Civil Procedure concerning Third Party Practice shall be applicable.

#### ARTICLE 62

##### Procedure before the Restitution Agency

1. If no objection has been raised against a petition within the time specified in the notice or in the service by publication, the Restitution Agency shall issue an order granting the petition. Where there is no dispute as to the limit of encumbrances and as to the continued existence of interests, it shall also make the appropriate findings on these matters.
2. If, however, the claim for restitution does not state a cause of action, or the truth of any of the allegations contained therein is controverted by entries in public records or by public documents available to the Restitution Agency, the latter shall order the claimant to submit a statement within an appropriate period of time. The Agency shall dismiss the petition on the merits if the claimant does not submit within this period an explanation justifying his petition or supplementing the facts alleged therein.
3. If an objection is made the Restitution Agency shall attempt to reach an amicable settlement unless the futility of such effort is evident. When an amicable settlement has been reached the Restitution Agency shall, on application, record the settlement in writing, and shall deliver a certified copy of the settlement to the parties concerned.

#### ARTICLE 63

##### Reference to the Court

1. If an amicable agreement cannot be reached in whole or in part or if the measures to be taken are not within the power of the Restitution Agency, it shall refer the case to the extent necessary to the Restitution Chamber of the District Court having jurisdiction over the Restitution Agency. This shall apply in particular also to cases where only the limit of encumbrance, or the continued existence of interests or the liability for debts is disputed.
2. Implementing regulations may confer jurisdiction on certain District Courts or on District Courts other than those specified in paragraph 1.
3. The Restitution Agency may stay the proceedings for a period not exceeding six months before referring the case to the Restitution Chamber, if the claimant consents and an amicable agreement may be expected.

#### ARTICLE 64

##### Appeal (Einspruch)

1. Any party to the case, by filing an appeal with the Restitution Agency, may appeal to the Restitution Chamber from a decision of the Restitution Agency rendered pursuant to Article 59, paragraph 1, second sentence, or Article 62, paragraphs 1 and 2; the period in which to file the appeal shall be one month; it shall be three months, if the appellant resides in a foreign country. The period to appeal shall begin to run with the service of the decision to be appealed from. Article 61, paragraph 2, shall be applicable.
2. The appeal may be based only on a violation of Article 59, paragraph 1, second sentence, or Article 62, paragraphs 1 or 2.

#### ARTICLE 65

##### Execution

Agreements recorded by the Restitution Agency and orders of the Restitution Agency which are no longer subject to appeal may be enforced by execution pursuant to the pro-

# PROPERTY CONTROL

visions of the Code of Civil Procedure. For this purpose, the Restitution Agency shall have the powers of a court (Vollstreckungsgericht). In effecting execution, the Restitution Agency may avail itself of the services of other agencies, especially of the courts.

## PART X JUDICIAL PROCEEDINGS

### ARTICLE 66

#### Members of the Restitution Chamber

The Restitution Chamber shall be composed of a Presiding Judge and two Associate Judges, eligible for the office of judge or for the higher Administrative Service. The Presiding Judge shall be a judge normally assigned to a court. The Associate Judges shall be appointed for a term of three years, unless they are professional judges. One of the three judges shall belong to a class of persons persecuted for any of the reasons set forth in Article 1.

### ARTICLE 67

#### Procedure

1. The Restitution Chamber shall adjust the legal relations of the parties in interest according to the provisions of this Law.

2. Unless this Law provides otherwise, the procedure shall be governed by the rules of procedure applicable in matters of non-contentious litigation, subject, however, to the following modifications:

- (a) The Chamber shall order an oral hearing; the hearing shall be public.
- (b) The proceedings may be stayed for a period not to exceed six months, at the request of the claimant. Repeated stays may be granted after the case has been reopened.
- (c) The Chamber shall render partial judgment on one or more of the claims before it, or on part of a claim, where the determination of any counterclaim, offset or equitable lien or any other defense in the nature of an offset or a counterclaim would substantially delay the decision on restitution.
- (d) Without prejudice to the final decision, the Chamber may order the temporary surrender of the confiscated property to the claimant either with or without security. In this case the claimant shall have, with respect to third persons, the rights and obligations of a trustee.

### ARTICLE 68

#### Form and Contents of the Decision

1. The decision of the Restitution Chamber shall be pronounced in an order supported by an opinion; the order shall be served on the parties concerned. Immediate execution may be had on this order, a subsequent appeal notwithstanding. The provisions of Sections 713, paragraph 2, and Sections 713a to 720 of the Code of Civil Procedure shall be applicable.

2. An appeal (sofortige Beschwerde) may be taken from this order within one month; the appeal may be filed within three months if the appellant resides in a foreign country. The time to appeal shall begin to run from the date of service of the order; Article 61, paragraph 2, shall be applicable. The Civil Division of the Court of Appeals (Oberlandesgericht) shall hear the appeal. The appeal may be based only on the ground that the decision violated the law. The provisions of Sections 551, 551 and 553 of the Code of Civil Procedure shall be applicable.

3. Implementing regulations may confer jurisdiction to hear such appeals on a certain Court of Appeals.

### ARTICLE 69

#### Board of Review

A Board of Review shall have the power to review any decision on any claim for restitution under this Law and to take whatever action is deemed necessary with respect thereto. Regulations to be issued by Military Government will provide for the appointment and composition of the Board, its jurisdiction, procedure, and such other matters as are deemed appropriate.

## PART XI SPECIAL PROCEEDINGS

### ARTICLE 70

#### Petition by the Public Prosecutor

Where no petition for the restitution of confiscated property has been filed on or before 31 December 1946, the Public Prosecutor at the seat of the Restitution Chamber may file the petition for restitution on behalf of a successor organization provided for in Article 10. This provision shall not apply if the claimant has waived his claim for restitution in accordance with Article 11, paragraph 3. The petition of the Public Prosecutor must be filed on or before 30 June 1949.

### ARTICLE 71

#### Conflict of Jurisdiction

1. If claims as described in Articles 1 to 48 are asserted by a person entitled to restitution in a court proceeding including the stage of compulsory execution by way of complaint, defense or counterclaim, the Court shall notify the Restitution Agency. The Court may, and on request by the Restitution Agency must, stay the proceedings or temporarily suspend execution by an order from which no

appeal may be taken. The Restitution Agency may direct that the claim be dealt with under this Law to the exclusion of the jurisdiction of the ordinary civil courts, or it may authorize the claimant to prosecute his claim before the ordinary civil courts; such authorization shall be binding on the latter courts. If an action in the ordinary civil courts is terminated because the claim is being dealt with under this Law, the court fees shall be remitted and neither party shall be entitled to costs incurred out of court.

2. The Court shall report to the Central Filing Agency any action taken under paragraph 1.

## PART XII

### ASSESSMENT OF COSTS

#### ARTICLE 72

##### Costs

1. As a rule no court fees be assessed in favor of the State (Gerichtskosten) in proceedings before Restitution Authorities. However, implementing regulations may provide for the assessment of costs, fees and expenses.

2. No advance payment, or bond or security for costs may be demanded from a claimant.

## PART XIII

### DUTY TO REPORT AND PENALTIES

#### ARTICLE 73

##### Duty to Report

1. Anyone who has, or has had in his possession, at any time after it was transferred by or taken from a persecuted person, any property which he knows or should know under the circumstances

- (a) is confiscated property within the meaning of the provisions of Article 2; or
- (b) is presumed to be confiscated property pursuant to the provisions of paragraph 1 of Article 3; or
- (c) has been at any time the subject of a transaction which may be avoided pursuant to the provisions of paragraph 1 of Article 4.

shall report this fact in writing to the Central Filing Agency on or before 15 August 1948.<sup>1</sup>

The report to be filed hereunder shall show the exact circumstances under which the reporting person obtained possession of the property; it shall also contain the name and address of the person from whom the reporting person acquired the property as well as the consideration paid, and in case the property no longer is in his possession, the name of the person to whom the property was transferred.

<sup>1</sup> Amendment No. 1, effective 15 May 1948 changes "May" to "August", Ed.

2. The following property need not be reported:

- (a) Tangible personal property which had been acquired in the course of an ordinary and usual business transaction in an establishment normally dealing in that type of property, provided, however, that property acquired at an auction, or at a private sale in an establishment engaged to a considerable extent in the business of auctioning or otherwise disposing of confiscated property, must be reported;
- (b) Tangible personal property, the value of which did not exceed RM 1,000 at the time of the confiscation;
- (c) Donations made to close relatives (as defined in Section 52, paragraph 2 of the Criminal Code) and donations which without doubt were made for moral consideration;
- (d) Property which has already been restituted and right of restitution expressly and in writing at any time between 8 May 1945 and the effective date of this Law.

3. No report filed pursuant to paragraph 1 by any person shall be considered, in proceedings before a Restitution Authority, as an admission of the reporting party that the property so reported is subject to restitution or as a waiver of any defense he might have had if the report had not been filed. It shall be admissible, however, as an admission of the facts stated therein.

4. The Central Filing Agency upon receiving a report under this Article shall forward a copy of the report to the appropriate Restitution Agency or Agencies in each district in which property affected by the report is situated. All reports filed pursuant to the provisions of this Article shall be open to inspection.

#### ARTICLE 74

##### Obligation to Inspect the Land Title Register and other Public Registers

1. Anyone holding real property or an interest in the nature of real property, shall ascertain by inspection of the Land Title Register whether or not the property in question must be reported. The same shall apply with respect to other property interests which are recorded in any other public register.

2. Whenever a public authority or other public agency learns of the whereabouts of property which must be reported, it shall report such fact without delay to the Central Filing Agency. Article 73, paragraph 4, shall be applicable.

#### ARTICLE 75

##### Penalties

1. Any person who
- (a) intentionally or negligently fails to comply with



his duty to report as set forth in Articles 73 and 74; or,

(b) knowingly makes any false or misleading statements to the Restitution Authorities, shall be punished with imprisonment not exceeding five years, or a fine, or both, unless heavier penalties under any other law are applicable.

2. No penalty shall be imposed in the case of subparagraph (a), where the report required by this Law has been made voluntarily and prior to discovery.

## ARTICLE 76

### Penalties (continued)

1. Whoever alienates, damages, destroys, or conceals any property coming under the provisions of this Law in order to thwart the rights of a claimant, shall be punished with imprisonment not exceeding five years, or a fine, or both, unless heavier penalties under any other law are applicable.

2. Confinement in a penitentiary up to five years may be imposed in especially serious cases.

3. The attempt shall be punishable.

## ARTICLE 77

### Penalties (continued)

In the cases within the scope of Articles 75 and 76, nobody may plead ignorance of facts which he could have ascertained by the inspection of public books and registers, and to the extent to which Article 74 imposed on him the obligation of such inspection.

## PART XIV

### RE-ESTABLISHMENT OF RIGHTS OF SUCCESSION AND ADOPTION

## ARTICLE 78

### Exclusion from Inheritance

1. An exclusion from the right of succession or the forfeiture of an estate which occurred during the period from 30 January 1933 to 8 May 1945 by virtue of a law or an ordinance for any of the reasons set forth in Article 1 shall be deemed not to have occurred.

2. The succession shall be deemed to have occurred at the effective date of this Law for the purpose of determining the periods of limitation.

## ARTICLE 79

### Avoidance of Testamentary Dispositions and of Disclaimers of Inheritance

1. Testamentary dispositions and contracts of inheritance made in the period from 30 January 1933 to 8 May 1945 in which any descendant, parent, grandparent, brother, sister, half-brother, half-sister, or their descendants, as well as a spouse, was excluded from inheritance for the purpose of avoiding a seizure of the estate by the State, expected by the testator for any of the reasons set forth in Article 1, shall be voidable. The power of avoidance shall be governed by Sections 2080 et seq. or 2281 et seq. of the Civil Code, unless paragraph 3 *infra* provides otherwise.

2. Disclaimers of inheritance by persons described in paragraph 1 shall be voidable, provided that such disclaimers were made within the period from 30 January 1933 to 8 May 1945 in order to prevent an expected seizure of the property by the State for any of the reasons set forth in Article 1. The right of avoidance shall be governed by Sections 1954 et seq. of the Civil Code, unless paragraph 3 of this Article provides otherwise.

3. Testamentary dispositions, contracts of inheritance or disclaimers of inheritance must be voided on or before 31 December 1948. The exercise of the power of avoidance within this period shall be deemed timely.

## ARTICLE 80

### Testamentary Disposition of a Persecuted Person

1. A testamentary disposition made between 30 January 1933 and 8 May 1945 shall be valid in spite of complete non-compliance with form requirements if the testator made such disposition in view of an actual or imaginary immediate danger to his life based on measures of persecution for any of the reasons set forth in Article 1, and where the circumstances were such that he could not or could not be expected to, comply with the statutory form requirements.

2. Any testamentary disposition coming within the scope of paragraph 1 shall be deemed not to have been made if the testator was still capable of making a testamentary disposition complying with the statutory form requirements after 30 September 1945.

## ARTICLE 81

### Re-Establishment of Adoptions

1. If an adoption relationship was cancelled within the period from 30 January 1933 to 8 May 1945 for any of the reasons set forth in Article 1, such relationship may be reinstated *nunc pro tunc* by a contract between the foster parent or his heirs and the child or his heirs. Sections 1741 to 1772 of the Civil Code, with the exception of Sections 1744, 1745, 1747, 1752 and 1753, shall apply to the contract of reinstatement. A contract of reinstatement may be judicially confirmed even after the death of the parties to it. If one of the parties concerned is not available, a guardian (Pfleger) may be appointed to represent his interests in the proceedings to reinstate the adoption.

2. Where an adoption was cancelled by decision of a court during the period from 30 January 1933 to 8 May 1945 for

any of the reasons set forth in Article 1, and if no facts have appeared which thereafter would have caused contracting parties to revoke the adoption on their own initiative, either party to the contract or his heirs may demand that the decision be vacated.

3. The local court (Amtsgericht) which cancelled the adoption shall have jurisdiction in the cases set forth in paragraph 2. The principles of paragraph 1, fourth sentence, above, shall be applicable. The decision of the court shall be discretionary and shall take into account the equities of the parties. When the cancellation of the adoption is vacated, the adoption shall be reinstated *nunc pro tunc*. The court may exclude the retroactive effect of its decision from certain parts thereof.

4. No costs or fees shall be charged in these proceedings.

5. The application for re-establishment of an adoption must be made on or before 31 December 1948.

## ARTICLE 82

### Jurisdiction

Any claims arising under Articles 78 to 81 shall be decided by the ordinary civil courts. No filing with the Central Filing Agency is required.

## PART XV

### REINSTATEMENT OF TRADE NAMES AND OF NAMES OF ASSOCIATIONS

## ARTICLE 83

### Re-Registration of Cancelled Trade Names

1. Where a trade name was cancelled in the Commercial Register within the period from 30 January 1933 to 8 May 1945 after the business establishment had been closed for any of the reasons set forth in Article 1, the cancelled trade name shall be re-registered on application if the business is reopened by its last owner, or owners, or their heirs.

2. If the closed business establishment was conducted at the time of its discontinuation by a single owner, the last owner or his heirs shall be entitled to demand the re-registration of the cancelled trade name. If there are several heirs, and if not all of them participate in the resumption of the enterprise, the re-registration of the cancelled trade name may be demanded, provided the heirs who do not participate in the business assent to the resumption of the trade name.

3. If at the time of its closing the business establishment was conducted by several personally liable partners, re-registration of the cancelled trade name may be demanded if all the personally liable partners establish a business enterprise or if one or several of them do so with the consent of the remaining ones; with respect to heirs of partners the principle of paragraph 2 shall be applicable.

## ARTICLE 84

### Change of Trade Name

Where a trade name has been changed in the period from 30 January 1933 to 8 May 1945 for any of the reasons set forth in Article 1, the former trade name may be restored upon the application of the person who owned the enterprise at the time the change was made or of his heirs, provided they now own the enterprise. The principles of Articles 83, paragraph 2, second sentence, and paragraph 3, shall be applicable.

## ARTICLE 85

### Names of Corporations

The principles of Articles 83 and 84 shall be applicable to the trade names of corporations.

## ARTICLE 86

### Reinstatement of Trade Names in Other Cases

Whenever the use of the former trade name is essential for the purpose of full restitution, the Restitution Chamber may permit the reinstatement of a cancelled or changed trade name in cases other than those provided for in Articles 83 to 85.

## ARTICLE 87

### Names of Associations and Endowments (Stiftungen)

Article 86 shall be applicable to the resumption of the name by an association or an endowment.

## ARTICLE 88

### Procedure

Applications for the registration in the Commercial Register of former trade names must be filed within the period provided for in this Law for the filing of claims for restitution. The Amtsgericht in its capacity as Court of Registry shall have jurisdiction over these applications except in the cases provided for in Article 86. Otherwise the procedure shall be governed by the rules of procedure applicable in matters of non-contentious litigation. No costs or fees shall be charged in these proceedings.

## PART XVI

### FINAL PROVISIONS

## ARTICLE 89

### Claims Reserved to Special Legislation

The reinstatement of lapsed interests arising out of insurance contracts and of lapsed copyrights and industrial rights (patents etc.) may be regulated by special legislation.

# PROPERTY CONTROL

## ARTICLE 90

### Statute of Limitations

To the extent to which the statute of limitations or prescriptive rights of the Civil Code might defeat any claim falling under this Law, the statute of limitations or a prescriptive period shall not be deemed to have expired until six months after such cause of action arises by reason of operation of this Law, but in no event prior to 30 June 1949.

## ARTICLE 91

### Taxes and Other Levies

1. Taxes and other public levies shall not be imposed in connection with restitution.
2. No taxes, including inheritance taxes, or other public assessments, fees or costs shall be refunded or subsequently levied in connection with the return of confiscated property.

## ARTICLE 92

### Implementing and Carrying-out Provisions

1. The Restitution Agencies will be designated by implementing regulations.
2. Unless otherwise provided in this Law, or ordered by Military Government, the Minister President of each State or any Ministers designated by him, shall issue the legal and administrative regulations necessary for the implementation of this Law.

## ARTICLE 93

### Jurisdiction of German Courts

1. German Courts are hereby authorized to exercise jurisdiction in civil cases arising under this Law against any stateless person having the assimilated status of United Nations displaced persons or against any national of the United Nations not falling within categories (3), (4), (5) of Section 10 (b) in Article VI of Military Government Law No. 2, as amended or as hereafter amended.
2. German Courts are hereby authorized to exercise jurisdiction in cases involving offenses against any of the provisions of Articles 73 to 77 of this Law by persons not exempted from the jurisdiction of the German Courts under Section 10 (a) in Article VI of Military Government Law No. 2 as amended or as hereafter amended.

## ARTICLE 94

### Official Text

The German text of this Law shall be the official text and the provisions of Paragraph 5 of Article II of Military Government Law No. 4, as amended, shall not apply.

## ARTICLE 95

### Effective Date

This Law shall become effective in Bavaria, Bremen, Hesse and Württemberg-Baden on 10 November 1947.

BY ORDER OF MILITARY GOVERNMENT

MILITARY GOVERNMENT — GERMANY  
UNITED STATES AREA OF CONTROL

## REGULATION NO. 1 UNDER MILITARY GOVERNMENT LAW NO. 59 Establishment of Central Filing Agency and Manner of Filing Claims for Restitution

Pursuant to Articles 55 and 56 of Military Government Law No. 59, "Restitution of Identifiable Property", it is hereby ordered as follows:

### I. Establishment of Central Filing Agency

1. There is hereby established the Central Filing Agency (Zentralanmeldeamt) provided for in Article 55 of Military Government Law No. 59, the mailing address of which is:  
Zentralanmeldeamt (Central Filing Agency)  
Bad Nauheim, Germany
2. This Agency is hereby vested with all powers and responsibilities which the Central Filing Agency has under the provisions of Military Government Law No. 59.

### II. Manner of Filing Claims for Restitution

1. In order to facilitate the speedy handling of claims, the petition containing the claim for restitution should follow the outline set out in the Appendix hereto. All information therein requested should be given, to the extent to which it is known, in exact and concise form.
2. Where the claimant desires to give more extensive explanations, they should be added as numbered annexes to the petition, together with appropriate documents and affidavits.
3. No printed forms need be used. The petition shall contain the required information in the order in which it is set forth in the Appendix hereto and each item thereof shall be given a number appearing on the left margin of the paper, corresponding to the number set forth in the Appendix. The sheets of paper on which the claim is typed should, for uniformity, be 8 1/2 inches wide and between 11 and 13 inches long, or have dimensions as similar as possible. All copies should be typewritten on one side of the sheet only and shall be legible. A minimum of five copies of the petition and accompanying documents should be filed together with such additional copies as may be re-

quired for the service of one copy on each interested party to the proceeding. (See Article 61 of Military Government Law No. 59).

4. Since the Law will be administered by German agencies, the petition should be written in German, if possible; otherwise, the English language shall be used. Affidavits submitted in any other language shall be accompanied by a translation in German.

5. In so far as possible, a separate petition should be filed for each claim:

- a. where more than one act of confiscation is the basis for the claims, or
- b. where the properties claimed are presently in more than one location.

6. Original documents should not be filed but should be retained by the claimant until requested by the Restitution Authority. However, true copies or photocopies of pertinent documents should be attached to all claims filed. Pictures or drawings should be furnished, if possible, where they are necessary in order to present an adequate description of the property.

7. Each petition shall be dated and shall be signed by the claimant or by his duly authorized representative; if signed by a person other than the claimant, the power of attorney or other authorization of such a person should accompany the claim.

### III. Penalties for False Claims.

Any person knowingly making false statements in connection with a claim for restitution under Military Government Law No. 59 will be liable to punishment under Article II, paragraph 33, of Military Government Ordinance No. 1.

### IV. Effective Date.

This regulation shall become effective on 10 November 1947.

BY ORDER OF MILITARY GOVERNMENT.

## APPENDIX

### OUTLINE OF INFORMATION REQUESTED IN A PETITION FOR RESTITUTION UNDER MILITARY GOVERNMENT LAW NO. 59

#### PART A.

#### Information Concerning the Claimant, his Attorney or Agent, if any, and the Persecuted Person

##### I. Information Concerning the Claimant:

1. Last name, first name, and middle name (in full).
2. Permanent residence.
3. Present address.
4. Address to which correspondence with the claimant concerning this claim should be sent.
5. Name and address of person within Germany who is authorized by the claimant to receive service of legal papers on his behalf; (see Article 58, paragraph 4).
6. If claimant is not the persecuted person, state all facts on which claimant bases his right to succeed to claim of the persecuted person. Attach copies of any pertinent documents. In the event that claim is based on an assignment, copies of the Military Government license authorizing such assignment should be attached.

##### II. Information Concerning the Agent of the Claimant, if any:

7. Last name, first name, and middle name (in full).
8. Address.
9. Nature of agency (attorney-at-law, attorney-in-fact, guardian, etc.). Attach copies of appropriate documents showing agency.

##### III. Information Concerning Persecuted Person:

10. Last name, first name, and middle name (in full).
11. Present address, if living.
12. Last known residence and address in Germany.
13. Residence and address at the time of the act of confiscation.

#### PART B

#### Information Concerning Property Claimed

##### I. Real Property and Interests in Real Property:

14. Detailed description of real property or of interests therein.
15. Location of the property.
16. Description of entry of property in Land Title Register (Grundbuch).

##### II. Business Enterprises:

17. Name and description of the business enterprise.
18. Location of the business enterprise:
  - a. at the time of the confiscation,
  - b. if moved, present or last-known address and location.
19. Description of entry in the Commercial Register (Handelsregister).

##### III. Securities: (Bonds, shares, etc.)

20. Give an exact description of the type, certificate number, etc. of the security. If an interest in or an obligation of an organization, give name and address of such organization.

JULY 1949

# PROPERTY CONTROL

21. Give location of the instrument at the time of the confiscation and present, or last known location.

#### IV. All Other Personal Property:

22. Give a detailed description of the property involved and all pertinent information with respect thereto, including location at the time of the confiscation and its present or last known location.

#### V. All Other Property Not Heretofore Mentioned:

23. Give a detailed description of the property involved and all other pertinent information with respect thereto, including, where relevant, location at the time of the confiscation and its present or last known location.

### PART C

#### Statement of Facts Concerning Act of Confiscation

##### I. Information Concerning Property Prior to the Time of the Confiscation:

24. Date of the acquisition of the property by the persecuted person.
25. Purchase price paid by the persecuted person.
26. Value of the property at the time of the acquisition described at item 24.
27. State in detail facts concerning improvements or any accretions, depreciation, and other changes in value of the property prior to the act of confiscation.
28. In case the claimant, at the time of the confiscation, was not the sole owner of the property claimed, state names, addresses, as well as legal nature, and percentage of interest of all other co-owners of the property.
29. Describe other rights and interests of third persons in the property, such as mortgages, liens, pledges, etc. Give all the facts and data concerning such persons, particularly names, addresses, as well as legal nature, extent and amount of their interests.

##### II. Information Concerning the Act of Confiscation:

30. Date and place of transaction which constituted the act of confiscation.
31. Give exact information as to the facts and circumstances by reason of which it is claimed that:
- a. a confiscation within the meaning of Article 2 occurred, or
  - b. a presumption within the meaning of Article 3 arises, or
  - c. the power of avoidance within the meaning of Article 4 arises.
- State clearly if the claim is based on more than one of these categories.
32. Purchase price specified at the time of the transfer of the property.
33. Any other terms specified at the time of the transfer of the property.
34. Consideration received at the time of the transaction and subsequently thereto. State consideration paid or given by the transferee, specify the amounts, time and place of payments, to whom the amounts were paid, and all other pertinent circumstances.
35. State any restrictions placed upon the use by the persecuted person of the consideration paid or given by the transferee.
36. Did the consideration received constitute a fair purchase price within the meaning of Article 3, paragraph 3? If not, what would have been a fair purchase price? State basis of estimate.
37. Give all other pertinent information, particularly names and addresses of witnesses capable of testifying to the statements made in Part C, Section II; attach copies of any pertinent evidentiary documents, etc.

##### III. Information Concerning the Property After the Act of Confiscation:

38. In instances where an accounting under the Law is claimed, give all pertinent information showing the basis of such claim, including information with respect to profits, losses, accretions, improvements, deterioration, damage, loss, management, expenses, etc. Give all other pertinent information necessary for such accounting between the parties with names and addresses of witnesses capable of testifying to the statements made in Part C, Section III; attach copies of pertinent evidentiary documents, etc.

##### IV. Information with Respect to the Restitutor and All Other Parties to the Proceedings, Except the Claimant:

39. Give full names, present or last known addresses, and extent of participation in, or knowledge of, the transaction or confiscation with respect to:
- a. the person who first acquired the property from the persecuted person, also, his address at the time of confiscation;
  - b. all persons (except present holder) subsequently holding the property;
  - c. the present or last known holder;
  - d. all other persons claiming an interest in the property (mortgagees, tenants, etc.).
40. Give all other pertinent information, particularly names and addresses of witnesses capable of testifying to the statements made in Part C, Section IV; attach copies of pertinent evidentiary documents, etc.

##### V. Other Information:

41. Any other pertinent information deemed necessary to

give a full statement of the petitioner's claim for restitution.

### PART D

#### Prayer for Relief

The Restitution Authority will not enter an order for restitution or other relief under this Law unless the claimants sets forth, in a prayer, the relief sought, detailed in the manner in which he desires it to appear in the final order of the Restitution Authority. In setting forth the prayer for relief in this Part, the following information should be included:

42. State, whether, in lieu of all other claims for restitution, the claimant elects the remedy set forth in Article 16 of the Law, if so, the amount claimed thereunder.
43. In case the remedy set forth in Article 16 is not elected, state with respect to each item of property listed in Part B, and with respect to each person named in Section IV of Part C, the specific relief sought, in particular:
- a. whether, and to what extent, restitution in kind is requested;
  - b. in case restitution in kind is not possible or in case of deterioration, whether compensation is requested, and, if so in what amount;
  - c. whether, and in what amount a claim is made for rents, use, profits, etc.;
  - d. whether and to what extent any other relief is sought under the provisions of this Law.

### PART E

I/We, hereby declare that all information given in the foregoing petition is to the best of my/our knowledge accurate, complete and true.

Date

Signature

MILITARY GOVERNMENT — GERMANY  
UNITED STATES AREA OF CONTROL

## GENERAL AUTHORIZATION NO. 2

### PURSUANT TO REGULATION NO. 1

#### UNDER MILITARY GOVERNMENT LAW NO. 2

1. A General Authorization is hereby granted by Military Government pursuant to the provisions of paragraphs 3(b), 5(b), and 5(c) of Regulation No. 1 under Military Government Law No. 2, "German Courts", for the performance of any official act of the character described in paragraph 3(a) of such Regulation, for the entry upon the commercial register, register of cooperatives, register of associations or ship register, as prescribed in paragraph 5(b) of such Regulation and for the entry upon the land register or other public register as prescribed in paragraph 5(c) of such Regulation, provided that such official act or register entry appear necessary or appropriate for the administration of Military Government Law No. 59, "Restitution of Identifiable Property".

2. This General Authorization shall not be deemed to constitute a license under the provisions of either Military Government Law No. 52 (amended), "Blocking and Control of Property", or Military Government Law No. 53, "Foreign Exchange Control".

3. This General Authorization shall become effective on 10 November 1947.

BY ORDER OF MILITARY GOVERNMENT.

MILITARY GOVERNMENT — GERMANY  
UNITED STATES AREA OF CONTROL

## REGULATION NO. 2

### UNDER MILITARY GOVERNMENT LAW NO. 59

#### Filing of Reports as Required by Military Government Law No. 59

Pursuant to Articles 73 and 74 of Military Government Law No. 59, "Restitution of Identifiable Property" (see Appendix 'A'), all persons holding certain property which may be subject to restitution under this Law are required to file, on or before 15 May 1948, a report concerning such property, with the Zentralanmeldeamt (Central Filing Agency), Bad Nauheim, Germany, as established by Regulation No. 1 under this Law. Pursuant to Articles 75, 76 and 77 of this Law (see Appendix 'A'), penalties are provided for the failure of such persons to file such reports. Pursuant to Article 92 of this Law and in implementation of Articles 73 and 74 thereof, it is hereby ordered as follows:

##### I. Manner of Filing Reports:

1. The report should follow the outline set out in Appendix 'B'. All information required should be given in exact and concise form.

2. When the reporting person desires to give more extensive explanations, they should be added as numbered

JULY 1949



# PROPERTY CONTROL

annexes to the report, together with appropriate documents and affidavits.

3. No printed form need be used. The report should contain the required information in the order in which it is set forth in Appendix 'B' and each item thereof shall be given a number, appearing in the left margin of the paper, corresponding to the number set forth in Appendix 'B'. The sheets of paper on which the report is typed should, for uniformity, be 8½ inches wide and between 11 and 13 inches long, or have dimensions as similar as possible. All copies should be typewritten on one side of the sheet only and shall be legible. The report shall be written in German; one original and two duplicate copies thereof shall be filed.

4. Property in different location should be reported separately.

5. Each report should be dated and shall be signed by the person filing the report or by his duly authorized representative; if signed by a person other than the reporting person, the power of attorney or other authorization of such a person shall accompany the report.

## II. Effective Date:

This regulation shall become effective on 10 November 1947.

BY ORDER OF MILITARY GOVERNMENT.

## APPENDIX A

### RELEVANT ARTICLES FROM MILITARY GOVERNMENT LAW NO. 59 AND FROM REGULATION NO. 1 ISSUED THEREUNDER

#### EXCERPTS FROM MILITARY GOVERNMENT LAW NO. 59

##### ARTICLE 2

###### Acts of Confiscation

1. Property shall be considered confiscated within the provisions of this Law if the person entitled thereto has been deprived of it, or has failed to obtain it despite a well founded legal expectancy of acquisition, as the result of:

- A transaction *contra bonos mores*, threats or duress, or an unlawful taking or any other tort;
- Seizure due to a governmental act or by abuse of such act;
- Seizure as the result of measures taken by the NSDAP, its formations or affiliated organizations;

provided the acts described in (a) to (c) were caused by or constituted measures of persecution for any of the reasons set forth in Article 1.

2. It shall not be permissible to plead that an act was not wrongful or *contra bonos mores* because it conformed with a prevailing ideology concerning discrimination against individuals on account of their race, religion, nationality, ideology or their political opposition to National Socialism.

3. Confiscation by a governmental act within the meaning of paragraph 1 (b) shall be deemed to include, among other acts, sequestration, confiscation, forfeiture by order or operation of law, and transfer by order of the State or by a trustee appointed by the State. The forfeiture by virtue of a judgment of a criminal court shall also be considered a confiscation by a governmental act, if such judgment has been vacated by order of an appropriate court or by operation of law.

4. A judgment or order of a court, or of an administrative agency, which, although based on general provisions of law, was handed down solely or primarily with the purpose of injuring the party affected by it for any of the reasons set forth in Article 1 shall be deemed a specific instance of the abuse of a governmental act. The abuse of a governmental act shall also include the procurement of a judgment or of measures of execution by exploiting the circumstance that the opponent was, actually or by law, prevented from protecting his interests by virtue of his race, religion, nationality, ideology or his political opposition to National Socialism. The Restitution Authorities (Restitution Agency, Restitution Chamber and Oberlandesgericht) shall disregard any such judgment or order of a court or administrative agency whether or not it may otherwise be appealed or reopened under existing law.

##### ARTICLE 3

###### Presumption of Confiscation

1. It shall be presumed in favor of any claimant that the following transactions entered into between 30 January 1933 and 8 May 1945 constitute acts of confiscation within the meaning of Article 2:

- Any transfer or relinquishment of property made during a period of persecution by any person who was directly exposed to persecutory measures on any of the grounds set forth in Article 1;
- Any transfer or relinquishment of property made by a person who belonged to a class of persons which on any of the grounds set forth in Article 1 was to be eliminated in its entirety from the cultural and economic life of Germany by measures taken by the State or the NSDAP.

(Paragraphs 2 and 3 are omitted).

##### ARTICLE 4

###### Power of Avoidance

1. Any transaction entered into by a person belonging to a class referred to in Paragraph 1 (b) of Article 3 within the period from 15 September 1935 (the date of the first

Nuremberg laws) to 8 May 1945 may, because of the duress imposed on such class, be avoided by a claimant where such transaction involved the transfer or relinquishment of any property unless:

- The transaction as such and with its essential terms would have taken place even in the absence of National Socialism, or
- The transferee protected the property interests of the claimant (Article 7) or his predecessor in interest in an unusual manner and with substantial success, for example, by helping him in transferring his assets abroad or through similar assistance.

(Paragraphs 2 to 5 are omitted).

##### ARTICLE 73

###### Duty to Report

1. Anyone who has, or has had in his possession, at any time after it was transferred by or taken from a persecuted person, any property which he knows or should know under the circumstances:

- is confiscated property within the meaning of the provisions of Article 2; or
- is presumed to be confiscated property pursuant to the provisions of paragraph 1 of Article 3; or
- has been at any time the subject of a transaction which may be avoided pursuant to the provisions of paragraph 1 of Article 4,

shall report this fact in writing to the Central Filing Agency on or before 15 May 1948.

The report to be filed hereunder shall show the exact circumstances under which the reporting person obtained possession of the property; it shall also contain the name and address of the person from whom the reporting person acquired the property as well as the consideration paid, and in case the property no longer is in his possession, the name of the person to whom the property was transferred.

2. The following property need not be reported:

- Tangible personal property which had been acquired in the course of an ordinary and usual business transaction in an establishment normally dealing in that type of property, provided, however, that property acquired at an auction, or at a private sale in an establishment engaged to a considerable extent in the business of auctioning or otherwise disposing of confiscated property, must be reported;
- Tangible personal property, the value of which did not exceed RM 1,000 at the time of the confiscation;
- Donations made to close relatives (as defined in Section 52, paragraph 2 of the Criminal Code) and donations which without doubt were made for moral considerations;
- Property which has already been restituted and property as to which the claimant has relinquished his right of restitution expressly and in writing at any time between 8 May 1945 and the effective date of this Law.

3. No report filed pursuant to paragraph 1 by any person shall be considered, in proceedings before a Restitution Authority, as an admission of the reporting party that the property so reported is subject to restitution or as a waiver of any defense he might have had if the report had not been filed. It shall be admissible, however, as an admission of the facts stated therein.

4. The Central Filing Agency upon receiving a report under this Article shall forward a copy of the report to the appropriate Restitution Agency or Agencies in each district in which property affected by the report is situated. All reports filed pursuant to the provisions of this Article shall be open to inspection.

##### ARTICLE 74

###### Obligation to Inspect the Land Title Register and Other Public Registers

1. Anyone holding real property or an interest in the nature of real property, shall ascertain by inspection of the Land Title Register whether or not the property in question must be reported. The same shall apply with respect to other property interests which are recorded in any other public register.

2. Whenever a public authority or any other public agency learns of the whereabouts of property which must be reported, it shall report such fact without delay to the Central Filing Agency. Article 73, paragraph 4, shall be applicable.

##### ARTICLE 75

###### Penalties

1. Any person who

- intentionally or negligently fails to comply with his duty to report as set forth in Articles 73 and 74; or,
  - knowingly makes any false or misleading statements to the Restitution Authorities,
- shall be punished with imprisonment not exceeding five years, or a fine, or both, unless heavier penalties under any other law are applicable.

2. No penalty shall be imposed in the case of subparagraph (a), where the report required by this Law has been made voluntarily and prior to discovery.

##### ARTICLE 76

###### Penalties (continued)

1. Whoever alienates, damages, destroys, or conceals any property coming under the provisions of this Law in order to thwart the rights of a claimant, shall be punished with imprisonment not exceeding five years, or a fine, or both,

# PROPERTY CONTROL

unless heavier penalties under any other law are applicable.

2. Confinement in a penitentiary up to five years may be imposed in especially serious cases.
3. The attempt shall be punishable.

## ARTICLE 77

### Penalties (continued)

In the cases within the scope of Articles 75 and 76, nobody may plead ignorance of facts which he could have ascertained by the inspection of public books and registers, if and to the extent to which Article 74 imposed on him the obligation of such inspection.

## EXCERPT FROM REGULATION NO. 1 UNDER MILITARY GOVERNMENT LAW NO. 59

### I. Establishment of Central Filing Agency

1. There is hereby established the Central Filing Agency (Zentralanmeldeamt) provided for in Article 55 of Military Government Law No. 59, the mailing address of which is:  
Zentralanmeldeamt (Central Filing Agency)  
Bad Nauheim, Germany
2. This Agency is hereby vested with all powers and responsibilities which the Central Filing Agency has under the provisions of Military Government Law No. 59. (Section II to IV are omitted.)

## APPENDIX B

### Outline of Information to be Reported

#### PART A

##### Information Concerning the Person Filing the Report, his Attorney or Agent

#### I. Information Concerning the Person Filing the Report:

1. Last name, first name and middle name (in full).
2. Permanent residence.
3. Present address.
4. Address to which correspondence with the person filing this report, should be sent.

#### II. Information Concerning the Agent, if any, of the Person Filing the Report:

5. Last name, first name and middle name (in full).
6. Address.
7. Nature of agency (attorney-at-law, attorney-in-fact, guardian, etc.). Attach copies of appropriate documents showing agency.

#### PART B

##### Information Concerning Property Reported

#### I. Information Concerning Present Holder and Location of Property Reported:

8. State whether reporting person is present possessor of property.
9. If not, state full name and address of person presently in possession of property, if known.
10. Present location of property, if known.

#### II. Real Property and Interests in Real Property:

11. Detailed description of real property or of interest therein.
12. Location of the property.
13. Description of entry of property in Land Title Register (Grundbuch).

#### III. Business Enterprises:

14. Name and description of the business enterprise.

15. Location of the business enterprise:
  - a. at the time of the acquisition by the person reporting;
  - b. present or last known location.

16. Description of entry in the Commercial Register (Handelsregister).

#### IV. Securities: (Bonds, shares, etc.)

17. Give an exact description of the type, certificate number, etc. of the security. If an interest in or an obligation of an organization, give name and address of such organization.

18. Give location of the instrument at the time it was acquired by the reporting person, and present or last known location.

#### V. All Other Personal Property:

19. Give a detailed description of the property involved and all other pertinent information with respect thereto, including location at the time it was acquired by the reporting person and present or last known location.

#### VI. Any Other Property Not Heretofore Mentioned:

20. Give a detailed description of the property involved and all other pertinent information with respect thereto, including location at the time it was acquired by the reporting person and the present or last known location.

## PART C

### Statement of Facts Concerning Acquisition of and Disposal of Property

#### I. Information Concerning Property at the Time of the Acquisition:

21. Date of the acquisition of the property by the reporting person.
22. Full name and address of the person from whom the property was acquired.
23. Exact circumstances under which the reporting person obtained possession of the property.
24. Purchase price specified at the time of the transfer of the property.
25. Any other terms specified at the time of the transfer of the property.
26. What part of the purchase price or consideration was paid or delivered to third persons or agencies and under what circumstances.
27. Value of the property at the time of its acquisition.
28. In case the reporting person, during the time he held the property, was not the sole owner of the property, state names, addresses, as well as legal nature and percentage of interest of all other co-holders of the property.

#### II. Information Concerning Property Subsequent to Acquisition:

29. Give any facts deemed advisable concerning appreciation or depreciation in the value of the property during the time it was held by the reporting person, including any change in the status of encumbrances against the property.
30. If property was disposed of by reporting person, give name and address of person to whom it was transferred.
31. Date on which the property was transferred.
32. Purchase price paid by the transferee.
33. Other pertinent terms of the contract of transfer.
34. Value of the property at the time of the transfer.

## ANNEX XIV

### MILITARY GOVERNMENT — GERMANY SUPREME COMMANDER'S AREA OF CONTROL

## LAW NO. 77

Amended (1)<sup>1</sup>

### Suspension of Certain Organizations and Offices concerned with Labor

1. The organizations, agencies and offices listed in the appendix to this law are hereby suspended to the full extent of their present operation in the occupied territory.
2. The Arbeitsgerichte (Labor Courts) are hereby suspended until further directions of the Military Government.
3. All funds, records and property of the organizations, agencies and officers hereby suspended shall be preserved intact by the present custodians thereof for such disposition as may be directed by the Military Government. Pending such directions all such records and property shall be subject to inspection by officers of the Military Government. Officers in charge thereof and administrative officials will remain at their posts, until otherwise directed, and will be responsible to the Military Government for taking all steps to preserve intact and undamaged all such funds, property, equipment, accounts and records and for complying with the directions of Military Government regarding Blocking and Control of Property.
4. Any person violating the provisions of this law shall upon

conviction by Military Government Court, be liable to any lawful punishment, including death, as the court may determine.

This law shall become effective upon the date of its first promulgation.

BY ORDER OF MILITARY GOVERNMENT.

## APPENDIX TO LAW NO. 77

### Suspension of Certain Organizations and Offices concerned with Labor

#### APPENDIX

- Generalbevollmächtigter für den Arbeitseinsatz (Office of the Plenipotentiary for the Employment and Distribution of Labor).
- Reichswohnungskommissar (Office of the Reich Housing Commissioner).
- Reichstreuhänder der Arbeit (Office of the Reich Trustees of Labor).
- Ehrengerichte (Honor Courts).

<sup>1</sup> SHAEF amendment consisted of dropping the following from Appendix to Law No. 77:

- "Sonderbeauftragter für Landwirtschaftliche Arbeiten (Office of the Special Commissioner for Agricultural Labor)
- Auskümm-Kommissionen (Comb-Out Commission)
- Reichsarbeitsleistungingenieure (Reich Allocation Engineers)
- Reichsinspektoren (Reich Inspectors)."

JULY 1949