(j) Written Statement of the Federal Republic of Germany, with annex: - Act Regulating Seabed Mining (Seabed Mining Act - MbergG) (unoffiical English translation)

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

RESPONSIBILITIES AND OBLIGATIONS OF STATES SPONSORING PERSONS AND ENTITIES WITH RESPECT TO ACTIVITIES IN THE INTERNATIONAL SEABED AREA

(REQUEST FOR ADVISORY OPINION)

STATEMENT OF THE FEDERAL REPUBLIC OF GERMANY

18 AUGUST 2010

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STATEMENT OF THE FEDERAL REPUBLIC OF GERMANY

PART I
CHAPTER I
Introduction

1 In its order of 18 May 2010 the Tribunal invited the States Parties to the United Nations Convention on the Law of the Sea of 10 December 1982 (the 'Convention') to present written statements regarding the request by the Council of the International Seabed Authority for an advisory opinion on responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area. At its 161st Meeting on 6 May 2010, the Council of the International Seabed Authority had decided by consensus to request the Seabed Disputes Chamber to render an advisory opinion on the following three questions[1]:

> 1. What are the legal responsibilities and obligations of States Parties to the Convention with respect to the sponsorship of activities in the Area in accordance with the Convention, in particular Part XI, and the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982?
>
> 2. What is the extent of liability of a State Party for any failure to comply with the provisions of the Convention, in particular Part XI, and the 1994 Agreement, by an entity whom it has sponsored under Art. 153, paragraph 2 (b), of the Convention?
>
> 3. What are the necessary and appropriate measures that a sponsoring State must take in order to fulfil its responsibility under the Convention, in particular Art. 139 of the Convention and Annex III, and the 1994 Agreement?

2 Germany has welcomed from the beginning the decision of the Council to request an advisory opinion which, in the view of Germany, would contribute to further clarifying the extent of responsibility of States with respect to activities in the Area in the framework of the Convention and the 1994 Agreement relating to the Implementation of Part XI of the Convention. Furthermore, Germany welcomes the fact that use is being made of the possibility to request advisory opinions from the Tribunal and thus to further strengthen the international Law of the Sea.

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[1] Doc ISBA/16-C/13

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PART II
CHAPTER I
LEGAL ASPECTS

I. Jurisdiction of the Tribunal

3 Under Art. 191 of the Convention advisory opinions may be requested by the Council or the Assembly 'on legal questions arising within the scope of their [Council or Assembly] activities'. According to Art. 162 para. 2 (a) of the Convention it is the function of the Council to coordinate the implementation of Part XI on all matters within the competence of the Authority, which is charged with organizing, carrying out and controlling activities in the Area (Art. 153 para. 1 of the Convention) and exercising such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of Part XI (Art 153 para. 4 of the Convention). In particular, the Council approves or rejects plans of work for activities in the Area (Art. 153 para. 3 of the Convention). Applicants for a plan of work shall be sponsored by a State Party which assumes certain responsibilities as detailed in Art. 139 of the Convention in connection with Art. 4 para. 4 of Annex III to the Convention. Thus, an application without a sponsoring State or an application with a sponsoring State which is not able or willing to meet its obligations under the deep seabed mining regime must be rejected. It may be recalled that the responsibility of sponsoring States is – according to the *travaux préparatoires* of this part of the Convention[2] – one of the central elements of the mining regime.

Germany therefore holds the view that the questions submitted by the Council fall within the scope of the Council's activities for the purposes of Art. 191 of the Convention and thus within the jurisdiction of the Tribunal.

II. Substance of the questions posed

4 Germany would like to comment:
- on the question of responsibilities and obligations of States Parties to the Convention with respect to the sponsorship of activities in the Area,
- on the question of the necessary and appropriate measures that a sponsoring State must take in order to fulfil its responsibility and
- on the issue of whether a differentiated regime of due diligence is applicable.

[2] See the sources quoted in *Nadan/Lodge/Rosenne*, UNCLOS, A Commentary, Vol VI, The Hague 2002, p. 118/119.

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A Legal responsibilities and obligations of States Parties to the Convention with respect to sponsorship of activities in the Area

5 The Convention attaches significant importance to sponsorship by States Parties. Only contractors sponsored by a State Party are eligible to submit a plan of work to operate in the Area (Art. 153 para. 2 (b), para. 3 of the Convention; Arts. 3, 4 para. 1 of Annex III). By granting sponsorship, a State accepts the obligations specified in the Convention. These take effect upon the registration of the sponsorship with the International Seabed Authority and are complemented by the sponsorship agreement concluded between the State Party and the respective contractor. States Parties are also obliged, pursuant to Art. 153 para. 4 of the Convention, to assist the Authority in taking the necessary measures to ensure compliance in accordance with Art. 139 of the Convention.

6 According to Art. 139 para. 1 of the Convention, States Parties must ensure that contractors sponsored by them operate in compliance with the provisions of Part XI. Art. 139 para. 2 of the Convention adds that 'a State Party shall not however be liable for damage caused by any failure to comply with this Part by a person whom it has sponsored under article 153, paragraph 2 (b), if the State Party has taken all necessary and appropriate measures to secure effective compliance under article 153, paragraph 4, and Annex III, article 4, paragraph 4.'

7 An elaboration of how Parties may fulfil their obligations can be found in Annex III. Art. 4 paras. 1-3 establish the criteria to be met by contractors applying for approval of plans of work for activities in the Area. Para. 4 specifies 'necessary and appropriate measures to secure compliance' (Art. 139 para. 2 of the Convention) as comprising 'adopted laws and regulations' and 'administrative measures' which are 'reasonably appropriate for securing compliance.' At the same time – like Art. 139 paras. 1, 2 of the Convention - the clear wording of Art. 4 para. 4 of Annex III restricts the obligation to take measures to secure compliance, reflecting a general principle of law that 'no one is bound to an impossibility' (*ad impossibile nemo tenetur*).[3] On that basis, Germany holds that a State which has exercised due diligence in taking the necessary legislative and administrative measures to meet its obligations under the Convention to regulate and control the activities of the contractor cannot be held responsible for any breach of the provisions of Part XI by a contractor.

8 Accordingly, Germany is of the opinion that the contractor bears primary responsibility (see Art. 22 of Annex III), and the sponsoring State is liable only for failure to take appropriate measures to secure compliance by the contractor whom it sponsors and thus only

[3] *Dupuy*, La Responsabilité Internationale des Etats pour les Dommages d'Origine Technologique et Industrielle, Paris 1976, pp. 256.

for supervisory fault.[4] There is no subsidiary or secondary responsibility on the part of the sponsoring State should the contractor violate the standards established in Part XI.

B. Necessary and appropriate measures that a State must take

1. The applicable due diligence standard

9 Germany is of the view that no clear-cut definition of due diligence has emerged so far in international law. It might even be impossible to articulate such a definition. Rather, the precise degree of due diligence seems to vary from one field to another, depending on the level of protection provided in the relevant international instruments. Another crucial factor to take into account are the circumstances of the individual case. In the present context it is however clear that the minimum standards as contained in Reg. 31 paras. 2-4 of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area[5] must be respected.

10 Germany holds that in general a high standard of due diligence has to be applied. The protection of the Area as the common heritage of mankind (Art. 136 of the Convention) has to be considered of paramount importance. Moreover, uncertainties relating to the effects of deep seabed mining and its potential to cause serious damage demand a particularly high due diligence standard. Art. 139 para. 1 of the Convention supports this view. States Parties must ensure that not only themselves and e.g. persons effectively controlled by them (see Art. 8 of the ILC Articles on State Responsibility) act in conformity with Part XI but also that persons who possess the nationality of State Parties and are sponsored by them (Art. 153 para. 2 (b) of the Convention) operate in accordance with the Convention. These provisions demonstrate that the Convention, in view of the importance of the Area as the common heritage of mankind, considers it necessary not only to provide for a high level of protection in Part XI, but also to establish a strong link between States Parties and contractors by requiring State sponsorship, thus ensuring that States adequately control contractors. To this end, States need to have a strict regulatory regime in place.

2. Germany's Meeresbodenbergbaugesetz (Seabed Mining Act)

11 Indeed, introducing and enforcing domestic laws and regulations constitutes a crucial element of the obligations of States Parties under Art. 139 of the Convention and Art. 4 para. 4 of Annex III. Germany submits that the German Meeresbodenbergbaugesetz (Seabed

[4] See *Brown*, Sea-bed energy and mining: the international legal regime, Dordrecht 1992, p. 76.
[5] Decision of the Assembly of 13 July 2000, Doc. ISBA/6/C/12.

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Mining Act),[6] adopted in 1995, is one possible means of fulfilling this obligation, although certainly not the only one. The German statute contains strict conditions for engaging in activities in the Area. It authorizes the Federal Government to bring into force the rules and regulations contained in Art. 160 para. 2 (f) (ii) and Art. 162 para. 2 (o) (ii) of the Convention, Art. 17 of Annex III and figure 15 of section 1 of the Annex to the Implementing Agreement. The Federal Ministry of Economics and Technology may enact ordinances to give effect to these provisions (section 7 of the Seabed Mining Act). Thanks to this Act, the Federal Government is in a position to set its own stricter standards for engaging in activities in the Area, building on the rules and regulations of the International Seabed Authority. In addition, the Act contains a strict regime for granting access to contractors in order to guarantee the orderly execution of activities in the Area, provisions on effective control and supervision, a clear division of responsibilities and, ultimately, sanctions if the relevant provisions are breached.

12 The Act permits applicants to engage in activities in the Area only on the condition that they have obtained the approval of the Lower Saxon Office for Mining, Energy and Geology (Landesamt für Bergbau, Energie und Geologie in Niedersachsen), the authority charged with implementing the Act[7], and have concluded a contract with the International Seabed Authority. The Landesamt may only approve applications if, among other things, the application and plan of work meet the conditions set out in the Convention, the Implementing Agreement and the relevant rules and regulations issued by the Authority, in particular Art. 4 para. 6 (a) to (c) of Annex III, and if the applicant has been found reliable and can guarantee that the activities in the Area will be implemented in an orderly manner. An applicant is "reliable" if, for example, he possesses the necessary expertise and has not previously come to the attention of the authorities for violating environmental norms. If an applicant is approved, the documentation will be forwarded to the International Seabed Authority (section 4).

13 The Landesamt has comprehensive supervisory powers. It may demand information from all persons involved directly or indirectly in the activities in the Area and is empowered to examine documents and inspect operating facilities in detail. The Federal Ministry of Economics and Technology may, in this context too, enact the secondary legislation needed to guarantee effective supervision, for example by introducing reporting and recording requirements (section 8).

14 Contractors' responsibilities are also specified. They are responsible inter alia for complying with all applicable domestic instruments, the provisions of the Convention on the

[6] Meeresbodenbergbaugesetz vom 6. Juni 1995 (BGBl. I S. 778, 782), as amended by Article 160 of the Ordinance of 31 October 2006 (Federal Law Gazette I, p. 2407), Annex

[7] The Landesamt has been the responsible authority since 2006, when it became the legal successor of the Oberbergamt in Clausthal-Zellerfeld. The Act still uses the old name.

Law of the Sea and the Implementing Agreement, the rules and regulations of the International Seabed Authority, and for fulfilling the obligations deriving from their contracts, as well as for the safety of the operating facilities and protecting the environment. Suitably qualified persons must be appointed to meet these responsibilities; their tasks and powers must be stipulated unambiguously and seamlessly (sections 5 and 6). Failure to meet these responsibilities may result in a fine or even criminal sanctions (sections 11 and 12).

3. The issue of a differentiated regime of due diligence

15 Germany holds that the same standard of due diligence must apply to all States as regards the adoption of 'laws and regulation' (Art. 4 para. 4 of Annex III) and their implementation and enforcement. Since the latter admittedly requires considerable financial and personnel resources, this could ultimately constitute an obstacle to the effective participation of developing States in the Area, as they typically have fewer available capabilities to adequately monitor and control contractors.

16 While the principle of sovereign equality of States requires equal treatment of States in terms of responsibility, it does not necessarily prohibit establishing different rights and obligations taking into account specific circumstances.

The concept of common but differentiated responsibilities has come to be more and more accepted in international environmental law. However, whenever a distinction is made between the different capacities of States Parties to implement measures to prevent environmental damage, it is *explicitly provided* for.[1] Under the 1972 London Convention, for example, the measures required are to be adopted by States parties 'according to their scientific, technical and economic capabilities.' (Art. 11). The 1981 Abidjan Convention identifies the need to take account of States Parties' 'capabilities' when setting out the obligation to take all appropriate measures to prevent and control pollution and to ensure sound environmental management of natural resources (Art. 4). According to Art. 3 no. 1 of the United Nations Framework Convention on Climate Change, 'Parties should protect the climate system [...] in accordance with their common but differentiated responsibilities and respective capabilities.' Common but differentiated responsibilities of the Parties are also taken into account in Art. 10 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

17 While Art. 207 para. 4 of the Convention on the Law of the Sea obliges States Parties to endeavour to take measures with regard to marine pollution taking into account, *inter alia*,

[1] See also *French*, Developing States and International Environmental Law: The Importance of Differentiated Responsibilities, ICLQ 49 (2000), pp. 35.

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'the economic capacity of developing States', no such provision can be found in Part XI of the Convention. Consequently, Part XI of the Convention establishes the same standard of due diligence for all States. In Germany's view, Art. 148 of the Convention underlines this finding. Although it states that effective participation of developing States in activities in the Area shall be promoted, it also limits this principle to where it is 'specifically provided for in this Part' (Part XI). The genesis of Art. 148 of the Convention confirms that the provision '...(does) not create any specific obligations beyond those already contained in Part XI'.[9] Similarly, Art. 152 para. 2 of the Convention allows for consideration of the needs of developing States in the exercise of the Authority's powers and functions to the extent it is 'specifically provided for in this Part'.

18 There are several provisions dealing with the special needs of developing States:

- Art. 150 (h) of the Convention establishes a policy of protecting developing land-based producer States from the increased supply resulting from seabed mining on world markets and its negative impact on prices. For example, a system of compensation can be put into place if a developing land-based mineral-exporting State suffers a decrease in its export earnings (see Section 7 of the 1994 Agreement Relating to the Implementation of Part XI of the Convention).
- Other means of preferential treatment are specified in Annex III. In particular, Arts. 8 and 9 aim at ensuring that at least half of the seabed with economic value can be set aside for developing States.
- Moreover, Art. 13 para. 1 (d) of Annex III sets out a policy of providing incentives, when the Authority is negotiating the financial terms of its contracts, to encourage contractors to undertake joint arrangements with developing States.
- Art. 15 aims to ensure that personnel of developing States benefit from training provided by contractors.
- Section 5 of the 1994 Agreement Relating to the Implementation of Part XI of the Convention includes special consideration for developing States in the principles governing the transfer of technology.

19 In sum, the Convention provides for a system of promoting the participation of developing States in the activities in the Area through redistributive measures and capacity-building, not through requiring or allowing for differentiated standards of due diligence and responsibility. Therefore the obligations under Part XI with regard to contractors operating in the Area are the same for all sponsoring States.

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[9] See *Nadan/Lodge/Rosenne*, UNCLOS, A Commentary, Vol. VI, The Hague 2002, p. 224.

20 This finding is supported – and ultimately justified – by the denotation of the area as the common heritage of mankind (Art. 136 of the Convention, GA Res. 2749 (XXV) of 17 December 1970). A corollary to this concept is the duty to protect the marine environment from harm resulting from international seabed activities. Thus, Part XI establishes an international regime to protect the Area from damage and to ensure that activities are carried out for the benefit of mankind as a whole (Art. 140 of the Convention). It is because of its unique importance for mankind that the Area is not subject to appropriation or claims of sovereignty, but only to the authority of the International Seabed Authority, which acts on behalf of mankind (Art. 137 of the Convention) and, together with States Parties (Arts. 209, 192, 194 of the Convention), takes the necessary measures to effectively protect the marine environment. At the same time, the international regime established by the Convention recognizes individual interests of industrialized, developing and coastal States in the Area and seeks to accommodate those interests by spelling out in detail the competences and functions of the Authority, the principles and policies governing the activities in the Area, the interests of coastal States and lastly also the means of promoting the participation of developing States in the activities.

21 This careful balancing of interests and the decentralized system of protection established by the Convention are the result of lengthy negotiations during the Third Conference. They reflect the fundamental need to protect the Area as the common heritage of mankind. This, in Germany's view, militates in favour of a high due diligence standard and against differentiated standards of due diligence. The concept of responsibility not only has a compensatory function in that it triggers claims by the aggrieved party, but also serves as a guarantee for international obligations protecting certain goods as the risk of liability deters States from violating those obligations. An efficient system of protection thus presupposes an efficient system of responsibility.

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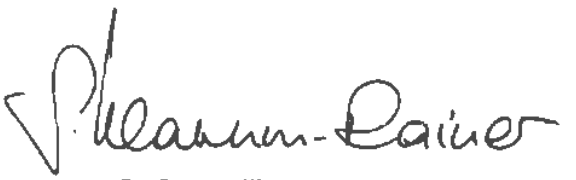
PART III
CONCLUSION

21 To summarize, it is the view of Germany that:

- Part XI of the Convention establishes a comprehensive regime of responsibilities and obligations on the part of States sponsoring persons and entities with respect to activities in the Area.
- Part XI gives primary responsibility to the contractor. The sponsoring State is only liable for failure to secure compliance by the contractor whom it sponsors and thus only for supervisory fault. There is no subsidiary or secondary responsibility on the part of the sponsoring State.
- There should be no differentiated regime of due diligence. Rather, a single high standard of due diligence should apply in matters regarding activities in the Area as the common heritage of mankind.
- The German *Meeresbodenbergbaugesetz* (Seabed Mining Act) could be looked at as one possible means of fulfilling the obligations of States Parties under the Convention.



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translation certified as accurate

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ANNEX TO THE
STATEMENT OF THE FEDERAL REPUBLIC OF GERMANY

Unofficial translation – for information only

Act Regulating Seabed Mining (Seabed Mining Act – MbergG)

Seabed Mining Act of 6 June 1995 (Federal Law Gazette I, p. 778, 782), most recently amended by Article 160 of the Ordinance of 31 October 2006 (Federal Law Gazette I, p. 2407)

Section 1 Purpose of the Act

(1) The purpose of this Act is

1. to ensure compliance with the obligations of the Federal Republic of Germany deriving from Part XI of the Convention, its Annex III, the Implementing Agreement and the rules and regulations issued by the Authority,
2. to ensure the safety of workers in seabed mining and of the operational facilities for seabed mining and the protection of the marine environment,
3. to take precautions against hazards deriving from prospecting and activities in the Area for life, health or the assets of third parties,
4. to regulate supervision of prospecting and activities in the Area.

(2) The provisions of the Convention, of the Implementing Agreement and the rules and regulations issued by the Authority shall govern the rights to the Area, to its resources and to minerals extracted from it.

(3) For prospectors and contractors, the provisions of this Act and of the ordinances issued on the basis of Section 7 shall also apply in addition to the provisions of the Convention, of the Implementing Agreement, to the rules and regulations and instructions of the Authority and the stipulations contained in the contracts concluded by them with the Authority.

Section 2 Definitions

Within the meaning of this Act

1. Convention:
   shall be the United Nations Convention on the Law of the Sea of 10 December 1982 including its Annexes;
2. Implementing Agreement:
   shall be the Agreement of 29 July 1994 relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982;
3. Area:
   shall be the seabed and the subsoil beyond the limits of national jurisdiction;
4. resources:

with the exception of water all the mineral resources present in the Area in solid, liquid or gaseous form found in deposits or accumulations in the Area on or beneath the seabed;

5. activities in the Area:
   shall be all activities to explore and exploit the resources of the Area;
6. Authority:
   shall be the International Seabed Authority;
7. Oberbergamt:
   shall be the Oberbergamt (Higher Mining Office) in Clausthal-Zellerfeld;
8. rules and regulations:
   shall be the rules, provisions and procedures enacted by the Authority pursuant to Article 160 (2) f ii and Article 162 (2) o ii of the Convention and Article 17 of its Annex III and Figure 15 of Section 1 of the Annex to the Implementing Agreement;
9. prospector:
   shall be any natural or legal person or commercial partnership which possesses German nationality or has been founded under German law, is subject to the control of the German authorities and prospects in the Area;
10. applicant:
    shall be any natural or legal person or commercial partnership which applies for the confirmation of a plan of work for activities in the Area, which possesses German nationality or has been founded under German law, and is subject to the control of the German authorities;
11. contractor:
    each applicant which has been approved by the Oberbergamt and which has concluded a contract on activities in the Area with the Authority;
12. contract:
    each contract concluded between the Authority and a contractor on activities in the Area including the confirmed plan of work.

Section 3 Implementation by the Oberbergamt

This Act shall be implemented by the Oberbergamt in Clausthal-Zellerfeld as an agency of the Federation loaned for this task by the State of Lower Saxony. To this extent, the Oberbergamt shall be subject to the material and legal supervision of the Federation.

Section 4 Conditions for access

(1) Any person wishing to prospect in the Area must first be registered by the Secretary-General of the Authority. The prospector must report the registration to the Oberbergamt prior to the commencement of prospecting.

(2) Any person wishing to engage in activity in the Area requires the approval of the Oberbergamt and a contract with the Authority.

(3) The Application for approval shall be presented to the Oberbergamt together with the application for the conclusion of a contract with the Authority, with the draft plan of work and with all other necessary documents. The application for the conclusion of a contract with the Authority, the draft plan of work and the other documents necessary for the conclusion of a contract with the Authority must also be presented in English.

(4) The Oberbergamt shall examine whether the preconditions for approval of the applicant are met. It shall obtain comments on the draft plan of work from the Federal Maritime and Hydrographic Agency with respect both to matters of shipping and to matters of environmental protection and shall take account of these in its decision. In matters of environmental protection, the Federal Maritime and Hydrographic Agency shall submit its comments in consensus with the Federal Environment Agency.

(5) If several applications for approval are received for the same field or parts thereof, the order in which the applications are received by the Oberbergamt shall determine precedence However, precedence shall exist only if the application contains sufficient data permitting scrutiny of the main preconditions for approval.

(6) An applicant shall be approved if

1. the application and the plan of work meet the preconditions of the Convention, of the Implementing Agreement and of the rules and regulations issued by the Authority for the conclusion of a contract and in particular the obligations pursuant to Article 4 (6) letters a to c of Annex III to the Convention and
2. the applicant
   a) is sufficiently reliable and can guarantee that the activities in the Area will be implemented in an orderly manner which upholds the needs of operational safety, of health and safety at work and of environmental protection,
   b) can provide the funding needed for an orderly execution of the activities in the Area and
   c) can show plausibly that the activities planned in the Area can be carried out on a commercial basis.

(7) If an applicant is a member of a partnership or consortium of entities from several States Parties to the Convention (Article 4 (3) of Annex III of the Convention), the applicant can be approved without scrutiny of the plan of work if the draft plan of work has been examined in one of the States Parties involved and the applicant entity has been approved, to the extent that equal preconditions exist in the relevant State Party for the examination of draft plans of work and the approval of applicants.

(8) Approval must be refused if a contract has already been concluded between the Authority and a third party for the field envisaged in the application regarding the exploration or exploitation of the same resources.

(9) Approval can be made subject to conditions in order to attain the purposes cited in Section 1. Where necessary to attain these objectives, conditions can also be imposed subsequently.

(10) If the Oberbergamt approves the applicant, it shall transmit the approval, the English version of the application for the conclusion of a contract, the draft plan of work and all other necessary documents to the Federal Ministry of Economics and Technology, which shall forward the approval with these documents to the Authority.

(11) The approval shall not be transferable.

Section 5 Responsibility

Prospectors and contractors shall be responsible for

1. fulfilling the obligations deriving for them from the Convention, the Implementing Agreement, the rules and regulations and instructions of the Authority, the contract, this Act, the ordinances enacted on the basis of Section 7 and the administrative decisions taken by the Oberbergamt.
2. the safety of the operating facilities which serve the prospecting or activities in the Area, including their orderly erection, maintenance and removal, and
3. protection of the environment in the case of prospecting or activity in the Area.

Section 6 – Persons responsible

(1) Prospectors and contractors shall be required
1. to appoint the necessary number of persons responsible for heading and supervising the prospecting or activities in the Area; those persons must dispose of the necessary reliability, expertise and physical condition to exercise their responsibilities, tasks and powers, for the planned and safe execution of the prospecting and activities in the Area,
2. to stipulate the tasks and powers of the responsible persons unambiguously and seamlessly, and to co-ordinate them in such a way that orderly collaboration is ensured,
3. to give a written declaration of the appointment and removal of responsible persons and to provide a precise description of their tasks and powers in this declaration,
4. to provide the Oberbergamt with the names of the responsible persons, citing their position in the operation and their qualifications, and to report to the Oberbergamt without delay changes to their position in the operation and their departure.

The persons responsible for heading and supervising the prospecting or the activities in the Area shall be responsible pursuant to Section 5 with regard to the tasks and powers transferred to them.

(2) The appointment of responsible persons pursuant to (1) shall not revoke the responsibility of prospectors and contractors pursuant to Section 5.

Section 7 Authorisation to enact ordinances

(1) The Federal Government is authorised to bring into force by means of ordinances the rules and regulations on prospecting, exploration and exploitation of resources in the Area which are adopted by the Authority pursuant to Article 160 (2) f ii and Article 162 (2) o ii of the Convention and Article 17 of its Annex III and Figure 15 of Section 1 of the Annex to the Implementing Agreement.

(2) The Federal Ministry of Economics and Technology is authorised to enact ordinances containing provisions on the implementation of the rules and regulations cited in (1). The ordinances shall be enacted in consensus with the Federal Ministry of Labour and Social Affairs to the extent that they refer to questions of health and safety at work, and in consensus with the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety to the extent that they refer to questions of environmental protection. This shall be without prejudice to the authorisations pursuant to the Federal Maritime Responsibilities Act.

Section 8 Mining supervision

(1) Activities of prospectors and contractors in the Area shall be subject to the supervision of the Oberbergamt.

(2) The Oberbergamt can demand the information necessary for it to fulfil its tasks, can access and scrutinise operational notes and other documents, and can undertake visits. All persons directly or indirectly involved in prospecting or activities in the Area shall be required to supply the information demanded by the Oberbergamt.

(3) The persons commissioned by the Oberbergamt as supervisors (supervisors) are authorised
1. to enter operational facilities, business rooms, establishments and airborne and waterborne vehicles of the party required to furnish information and to undertake examinations there,
2. to seize objects where this is necessary to examine causes of accidents.

The supervisors may enter operational facilities, business and operational rooms and airborne and waterborne vehicles used for prospecting or activities in the Area, both within and outside normal business and operational hours, and rooms which serve residential purposes only in order to prevent imminent danger to public safety and order; to this extent, the fundamental right of the inviolability of the home (Article 13 of the Basic Law) is restricted.

(4) The party obliged to furnish information may refuse to provide information on questions the answer to which would make himself or a relative, as specified in Section 383 (1) items 1 to 3 of the Code of Civil Procedure, liable to criminal prosecution or to proceedings under the Regulatory Offences Act. He must be informed of the right to remain silent.

(5) The Federal Ministry of Economics and Technology can enact ordinances containing the necessary provisions for supervision in order to ensure that prospecting or activities in the Area take place in compliance with the Convention, the Implementing Agreement, the rules and regulations and instructions enacted by the Authority, the contract, the provisions of this Act and the ordinances enacted on the basis of Section 7. In particular, it can impose reporting, recording and retention requirements to this end.

Section 9 Archaeological and historic objects

Objects of an archaeological or historic nature found in the Area must be reported to the Oberbergamt and treated in accordance with its instructions. These instructions must take account of Article 149 of the Convention and shall be issued in consensus with the Federal Ministry of the Interior.

Section 10 Costs

(1) Costs (fees and expenses) shall be levied for official action pursuant to this Act and to the ordinances issued on the basis of this Act

(2) The Federal Ministry of Economics and Technology is authorised to enact ordinances containing more precise stipulations of what is chargeable and providing fixed rates or framework rates.

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Section 11 Fines

(1) An administrative offence is committed by anyone who deliberately or negligently
1. contrary to Section 4 (1) sentence 1 prospects without registration,
2. contrary to Section 4 (1) sentence 2 fails to register or to register accurately or in due time,
3. contrary to Section 4 (2) engages in activities in the Area without a contract with the Authority,
4. acts contrary to an enforceable condition pursuant to Section 4 (9),
5. violates requirements or prohibitions of his contract,
6. violates a provision of Section 6 (1) No. 1 on the obligation to appoint responsible persons, of Section 6 (1) No. 3 on the obligation to declare the appointment or removal of responsible persons or the precise description of their tasks and powers in the declaration, or of Section 6 (1) No. 4 on the obligation to name the responsible persons or to report changes in their position or their departure,
7. violates an ordinance issued pursuant to Section 7 (2) where it refers to this fine provision for a certain offence, or
8. contrary to Section 8 (2) sentence 2 fails to provide information on request or fails to provide such information accurately, completely or in due time.

(2) In the cases of (1) Nos. 2, 6 and 8, the administrative offence may be punished by a fine of up to € 5,000, and in the cases of (1) Nos. 1, 3, 4, 5 and 7, by a fine of up to € 50,000.

(3) The Oberbergamt shall be the administrative authority within the meaning of Section 36 (1) No. 1 of the Act on Administrative Offences.

(4) The prosecution of an administrative offence shall not take place when the Authority is implementing or has implemented a procedure regarding the same offence with a view to imposing a sanction pursuant to Article 18 (2) of Annex III of the Convention.

Section 12 – Penal provisions

(1) Anyone who deliberately commits an act described in Section 11 (1) Nos. 1, 3, 4 or 5 and thereby endangers the life or health of another, stocks of living resources and marine life, or third party assets of significant value, shall be liable to imprisonment of up to five years or to a fine.
(2) Anyone who
1. causes the danger by negligence or
2. acts recklessly and causes the danger by negligence shall be liable to imprisonment of up to two years or a fine.

(3) (1) and (2) shall not apply if the offence is liable to an equal or heavier punishment pursuant to Sections 324, 326, 330 or 330a of the Criminal Code.

Section 13 Transitional arrangements

(1) Holders of valid authorisations issued pursuant to Section 4 of the Act on the Interim Regulation of Deep Seabed Mining of 16 August 1980 (Federal Law Gazette I p. 1457) are required to submit an application for approval pursuant to Section 4 (3) to the Oberbergamt immediately following entry into force of the Implementing Agreement for the Federal Republic of Germany. The authorisations issued shall become invalid following the

conclusion of the contract with the Authority, but at the latest two years following entry into force of the Implementing Agreement for the Federal Republic of Germany.

(2) If the holder of such an authorisation is a partnership or consortium of entities from two or more states, the obligation pursuant to (1) sentence 1 shall not take effect until the Implementing Agreement has entered into force for all home states of the participating entities. In this case, the authorisations issued shall become invalid at the latest two years following entry into force of the Implementing Agreement for the last of the relevant states. Should it not have entered into force for one of the relevant states by 15 November 1998, the relevant authorisations shall become invalid on 16 November 1998 unless the Implementing Agreement has not entered into force by this time; in this case, they shall become invalid at the latest two years following entry into force of the Implementing Agreement.

(3) At the time at which the last authorisation becomes invalid, the following legislation shall cease to have effect:

1. the Act on the Interim Regulation of Deep Seabed Mining of 16 August 1980 (Federal Law Gazette I p. 1457), amended by the Act of 12 February 1982 (Federal Law Gazette I p. 136),
2. the Ordinance on Deep-Sea Mining Costs of 31 October 1985 (Federal Gazette p. 13565).

The day on which the Act and the Ordinance on Costs expire shall be notified in the Federal Law Gazette.
