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Absatz 4 des Gesetzes vom 20. Juli 2017 (BGBl. I S. 2808)

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## **Federal Mining Act (BBergG)**

Federal Mining Act of 13 August 1980 (Federal Law Gazette I p. 1310), last amended by  
Article 2 (4) of the Act of 20 July 2017 (Federal Law Gazette I, p. 2808)

### **Preamble**

The Bundestag passed the following law with the approval of the Bundesrat:

### **Part I**

### **Introductory Provisions**

#### **Section 1**

#### **Purpose of the Act**

This purpose of this Act is

1. to ensure the availability of raw materials by managing and promoting the exploration, extraction and processing of mineral resources with a view to geographical constraints and sustainable mining while applying economical and low-impact technology,
2. to ensure the safety of mining operations and employees, and
3. to strengthen precautions against risks to human life, health or to third-party equipment and materials arising from mining activities and to improve the compensation of unavoidable damage.

#### **Section 2**

#### **Material and territorial scope of application**

(1) This Act shall apply to

1. exploration, extraction and treatment of freely mineable and freehold mineral resources, including loading, transporting, unloading, storing and depositing resources, by-products and other materials, to the extent that these activities are directly related to operations involving exploration, extraction or treatment, and unless otherwise provided for in (4),
2. restoring usability of the surface during and after exploration, extraction and treatment of freely mineable and freehold mineral resources,

3. operating installations and facilities (facilities) primarily used or intended for use for activities specified in nos. 1 or 2.

(2) Furthermore, this Act shall apply to

1. testing the subsoil for suitability for underground storage sites,
2. installation and use of underground storage sites and the facilities primarily used or intended for use in operating an underground storage site,
3. other activities and facilities,

as long as this is expressly provided for. Sentence 1 nos. 1 and 2 shall only apply as long as this does not affect activities or facilities set forth in (1).

(3) This Act shall apply in the area of the continental shelf of the Federal Republic of Germany to the activities and facilities specified in (1) and (2) nos. 1 and 2, to underwater cables, transit pipelines and to research activities related to the continental shelf. Provisions of public international law regarding the high seas, the exclusive economic zone and the continental shelf shall remain unaffected.

(4) This Act shall not apply to loading, transport and unloading of resources, by-products and other materials as provided for in (1) no. 1

1. by means of rail transport by public railway companies,
2. by means of automobile transport on public roads or spaces,
3. by means of maritime traffic on the seaward side of the borders of territorial waters and on inland waterways and maritime shipping lanes and in maritime ports,
4. by means of aircraft, and
5. by means of pipelines located beyond the head section, after feeding into distribution pipelines or after the last measuring station for the parent material, as long as the pipelines serve for delivery
  - a) directly and exclusively to third parties or
  - b) to other facilities of the same company that are not intended for exploration, extraction or treatment of freely mineable and freehold mineral resources.

### **Section 3**

#### **Freely mineable and freehold mineral resources**

(1) Extractive and mineral resources (resources) shall mean, with the exception of water, all mineral deposits in solid or liquid form and gases occurring in natural sedimentation or concentrations (deposits) in the ground or on the earth's surface, on the seabed, in the subsoil of the seabed.

(2) Freehold resources are the property of the owner of the real property. Ownership in a piece of land shall not extend to freely mineable resources.

(3) Freely mineable resources shall be deemed the following, unless provided for otherwise under old rights that have been maintained (Sections 149 to 159) or under (4):

actinium and the actinides, aluminium, antimony, arsenic, beryllium, bismuth, boron, cadmium, caesium, chrome, cobalt, copper, francium, gallium, germanium, gold, hafnium, indium, iridium, iron, lanthanum and the lanthanides, lead, lithium, manganese, mercury, molybdenum, nickel, niobium, osmium, palladium, phosphorus, platinum, polonium, radium, rhenium, rhodium, rubidium, ruthenium, scandium, selenium, silver, strontium, sulfur, tantalum, tellurium, thallium, tin, titanium, tungsten, vanadium, yttrium, zinc, zirconium – in pure form and as mineral ores, except in bog, alum and vitriol ores – ; hydrocarbons and any gases generated during the extraction process; hard coal and lignite and any gases generated during the extraction process; graphite;

halites, potash, magnesium salt and borate salts and any salts occurring in these salts in the same deposit; brine;

calcium fluoride and barium sulfate.

The following shall be deemed freely mineable resources:

1. all resources in the area of the continental shelf and,
2. unless otherwise provided for in old rights (Sections 149 to 159),
  - a) all resources in the area of coastal waters, as well as
  - b) geothermal heat and the other energy sources generated during its extraction (geothermal heat).

(4) Freehold resources as provided for in this Act shall mean only the following, unless otherwise provided for in old rights (Sections 149 to 159):

1. basaltic lava with the exception of columnar basalt; bauxite; bentonite and other montmorillonite-rich clays; clay, if suitable for manufacturing incombustible and acid-resistant ceramics or ceramic products not considered to be brickwork products or suitable for manufacturing aluminum; diatomite; feldspar, china clay, pegmatite sand; mica; quartz and quartzite, if suitable for manufacturing incombustible products or ferrosilicon; roof slate; soapstone, talc; trass;
2. all other resources not covered by (3) or no. 1, if they are explored or extracted underground.

#### **Section 4 Definitions**

(1) Exploring (exploration) shall mean an activity indirectly or directly focused on discovering or determining the spatial extent of resources, with the exception of

1. activities related to official geological surveys,
2. activities aimed exclusively and directly at teaching or instruction, and
3. collecting minerals in the form of hand-sized or small samples for mineralogical or geological collections.

Large-scale exploration shall mean an inspection conducted with the help of geophysical or geochemical procedures, if limited to identifying parameters that provide broad inferences to possible deposit locations.

(2) Extracting (extraction) shall mean stripping or releasing resources, as well as related preparatory, accompanying and subsequent activities; with the exception of stripping or releasing resources

1. on a piece of property during or in connection with its exploitation for construction or other urban construction uses, and
2. in or on a body of water as a prerequisite for expanding or maintaining the property.

(3) Treating (treatment) shall mean

1. separating or enriching resources by material components or geometric measurements on a physical or physiochemical basis, including related preparatory, accompanying and subsequent activities,
2. briquetting, carbonizing, coking, gasifying, liquefying and dissolving out extractive and mineral resources,

if extraction of the resources to be treated is conducted by the entrepreneur itself in direct connection with operations, or if the resources are processed in the immediate vicinity of

where they are extracted. Treatment shall not mean executing an activity as provided for in sentence 1 by means of any other processing or finishing of resources (further processing) or manufacturing other products (incidental extraction) and if the major focus of the activity is not on treatment; the use of geothermal heat is equivalent to further processing.

(4) Restoring usability shall mean properly restoring the surface used for mining while taking the public interest into account.

(5) An entrepreneur shall mean a natural or juristic person or a business partnership that carries out or subcontracts any of the activities specified in Section 2 subsection 1 nos. 1 and 2 and subsections 2 and 3, on its own account.

(6) Extraction rights shall mean the right to extract freely mineable resources or freehold resources.

(7) The field that is the subject of an exploration licence, an exploration licence or mining proprietorship shall mean a section of the globe delimited by straight lines on the surface and by perpendicular surfaces to a specific depth, unless the boundaries of the scope of this Act require a different delimitation.

(8) Extraction operations shall mean facilities for extracting freely mineable or freehold resources.

(9) An underground storage site shall mean an installation for subterranean, containerless storage of gases, fluids and solid matter, with the exception of water.

(10) A transit pipeline shall mean a pipeline leading from the continental shelf or from the territory of another country to the continental shelf of the Federal Republic of Germany, or crossing through the continental shelf of the Federal Republic of Germany.

## **Section 5**

### **Application of the Administrative Procedure Act**

The Administrative Procedure Act shall apply to execution of this Act and of ordinances issued on the basis of this Act, unless otherwise provided for in this Act.

## **Section 5a**

### **Public notification**

(1) Decisions taken in the course of execution of this Act and to which Section 1 subsection 1 sentence 1 no. 1, 5 or 6 of the Environmental Appeals Act apply can also be notified to the public by the competent authority. Provisions on the notification of a decision by means of the service of documents and other provisions on public notification shall remain unaffected.

(2) The public notification shall be effected by the publication of the enacting terms of the decision and the information on legal remedies in the official publication of the competent authority and also in local daily newspapers which are disseminated in the area in which the decision is likely to have an effect; reference must be made to any conditions. If the decision is not published in full, the decision including relevant plans, the reasons for the decision and information on legal remedies must be displayed for viewing for two weeks following the notification. After two weeks have passed following the notification, the decision shall also be deemed to have been notified to those having the right to legal remedies under the Environmental Appeals Act; reference must be made to this in the notification. Following the public notification, the decision can be requested in writing until the expiry of the period in which legal remedies are possible by the associations named in sentence 3 and by those to whom the decision was to be notified. The public notification must state where and when the decision can be viewed pursuant to sentence 2 and requested pursuant to sentence 4.

## **Part II**

### **Mining Authorizations**

#### **Chapter 1**

#### **Freely mineable resources**

##### **Subchapter 1**

##### **Exploration licence, extraction licence, mining proprietorship**

## **Section 6 Principle**

An exploration licence shall be required for exploring freely mineable resources, and an extraction licence or mining proprietorship shall be required for extracting freely mineable resources. These rights may be granted or awarded only to natural or legal persons.

## **Section 7 Exploration licence**

(1) An exploration licence shall accord the holder the exclusive right to do the following according to the provisions of this Act in a specific field (exploration licence field):

1. to explore for the resources specified in the licence,
2. to extract and acquire ownership in the resources that must be stripped or released during planned explorations,
3. to erect and operate facilities as provided for in Section 2 (1) no. 3 that are required for exploring the resources and for carrying out related activities as provided for in Section 2 (1) nos. 1 and 2.

Sentence 1 in connection with the restrictions stipulated by Section 4 (1) sentence 2 shall apply to a licence for large-scale exploration.

(2) A licence for exploration for commercial purposes shall not rule out a licence for large-scale exploration as well as one or more licences for exploration for scientific purposes in the same field, nor shall a licence for large-scale exploration rule out a licence for one or more licences for exploration for scientific purposes in the same field.

## **Section 8 Extraction licence**

(1) An extraction licence shall accord the holder the exclusive right to the following, according to the provisions of this Act,

1. to explore for the resources specified in the extraction licence in a specific field (extraction licence field), to extract them and other resources, as well as to acquire ownership in the resources,
2. to extract the resources that must be stripped or released when installing auxiliary structures and to acquire ownership in them,
3. to erect and operate the required facilities as provided for in Section 2 (1) no. 3,
4. and to request cession of land.

(2) The provisions of the German Civil Code that apply to claims arising from ownership shall apply mutatis mutandis to rights arising from the extraction licence, unless otherwise provided for in this Act.

(3) The extraction licence shall not rule out an extraction licence for large-scale exploration or one or more extraction licences for exploration for scientific purposes in the same field.

## **Section 9 Mining proprietorship**

(1) Ownership of mining property shall accord the exclusive right to carry out the activities and exercise the rights specified in Section 8 (1) nos. 1 to 4 in accordance with the provisions of this Act; the provisions of the German Civil Code that apply to real property shall apply mutatis mutandis to this right, unless otherwise provided for in this Act. Section 8 (3) shall apply mutatis mutandis.

(2) It is not permitted to consolidate a piece of land with mining property, nor to add mining property as part of a piece of land, nor to add a piece of land mining as part of mining property.

## **Section 10 Applications**

Exploration and extraction licences and mining proprietorships shall only be granted upon application. The application shall be submitted in writing to the competent authority.

## **Section 11 Denial of an exploration licence**

An exploration licence shall be denied if

1. the applicant has not specified exactly which resources it aims to explore,
2. the field in which exploration is planned does not conform to Section 4 (7) or is recorded on a map either with an unsuitable scale or not in accordance with the requirements of a mining ordinance pursuant to Section 67,
3. the applicant has not submitted a work program that demonstrates in particular that the planned exploratory operations are adequate with regard to type, scope and purpose, and will be executed within a suitable time frame,
4. the applicant does not agree to disclose the results of exploration to the competent authority if requested and without delay after work has been completed, and at the latest upon expiry of the licence,
5. the applicant refuses a request by the competent licensing authority to allow
  - a) licence holders for commercial exploration, when its exploration serves scientific purposes,
  - b) licence holders for commercial exploration or extraction licence holders or mining proprietorship holders, when it conducts large-scale exploration,

to participate in the Exploration in return for assuming a reasonable portion of expenses or to have someone represent them, if the field to be assigned partially or completely overlaps their fields containing the same Resource; this shall not apply to letter a if the purpose of scientific exploration is the development of new methods or equipment,

6. facts give reason to believe that the applicant, or in the case of legal persons and partnerships, the individuals authorized to represent them according to statute, by-laws or articles of association, are not sufficiently reliable,
7. in case of an exploration licence for commercial purposes or for large-scale exploration, the applicant cannot prove that it can obtain the funds required for proper exploration and related activities in accordance with Section 2 (1) nos. 1 and 2,
8. it would endanger practical and systematic exploration and extraction of freely mineable or freehold resources,
9. it would impair resources whose protection is in the public interest, or
10. overriding public interest prohibits exploration in the entire field to be assigned.

## **Section 12 Denial of an extraction licence**

(1) Section 11 nos. 1 and 6 to 10 shall apply mutatis mutandis to denial of an extraction licence. An extraction licence shall furthermore be denied if

1. the sites in which resources have been discovered are not specified exactly in a ground plan by coordinates and depth,

2. the field in which extraction is planned does not conform to Section 4 (7) or is marked in a map in a manner not in accordance with the requirements of a mining ordinance pursuant to Section 67,
3. the applicant cannot prove that the location and characteristics of the resources discovered will permit their extraction,
4. the work program submitted by the applicant does not indicate in particular that the extraction technology and facilities required afterwards both underground and at the surface are adequate and that the extraction will be executed within a suitable time frame.

(2) If the holder of a commercial exploration licence discovers the resources specified in this licence in the exploration licence field, the holder may only be denied an extraction licence for reasons set forth in (1) and only if the events justifying denial have occurred after the exploration licence was granted.

### **Section 13** **Denial of mining proprietorship rights**

Mining proprietorship shall be denied if

1. the applicant is not in possession of an extraction licence for the resources and the field specified in the application (mining proprietorship field),
2. the applicant cannot provide evidence that extraction is expected to be profitable in the future in the entire field specified in the application,
3. the field in which extraction is planned does not correspond to Section 4 (7) or its boundaries on the surface comprise more than 25 square kilometers, measured on a horizontal plane,
4. the applicant has not submitted the following information and documentation:
  - a) an exact description of the resources for which the mining proprietorship is intended,
  - b) indication of the location of the mining proprietorship field on a location map drafted by a recognized surveyor or a publicly appointed surveyor and supplied in duplicate that complies with the requirements of a mining ordinance pursuant to Section 67,
  - c) the name of the mining proprietorship to be granted, and
  - d) a description of the type and scope of extraction of the resources, including geological information on the deposit.

### **Section 14** **Priority**

(1) The competent authority shall notify a commercial exploration licence holder without delay of the details of any extraction licence application filed by a third party for a specific field partially or entirely located within the holder's exploration licence and for a specific resource subject to that exploration licence. If the exploration licence holder also files an application for an extraction licence within three months after receipt of the notification, the holder's application shall be given priority over all other applications for an extraction licence for the same resource, if the holder's application refers to the field located within the exploration licence.

(2) In all other cases, among those applications for exploration licences or extraction licences which cannot be denied for any reasons stipulated in Sections 11 or 12, the application that, in addition to fulfilling the requirement under Section 11 (7) for exploration

and extraction licences, also contains a work program that best serves the goal of practical and systematic exploration or extraction shall be given priority; the decision shall also take the applicant's other mining activities into consideration. Section 12 (2) shall remain unaffected.

### **Section 15**

#### **Involvement of other authorities**

Prior to making a decision on the application, the competent authority shall ensure that the authorities responsible for safeguarding the public interest as provided for in Section 11 no. 10 are given the opportunity to express their opinion.

### **Section 16**

#### **Form, content and auxiliary provisions**

(1) Exploration licences and extraction licences shall be granted in writing; the electronic form is not permitted. They shall be granted for a specific field and for specific resources. The same shall apply to mining proprietorships. An exploration licence shall be specified as either a commercial exploration licence, an exploration licence for scientific purposes or a large-scale exploration licence.

(2) The field for which an exploration licence is granted may differ from the field applied for if this is necessary to avoid risk to the competitive position of the companies exploring the resources, or to improve exploration of deposits.

(3) Subsequently adding licence requirements, or changing or expanding existing requirements is admissible, if

1. it is economically reasonable for the entrepreneur and the type of facilities it operates, and
2. it is feasible in view of good engineering practice

and to the extent required for ensuring compliance with the provisions of Sections 11 and 12 (1).

(4) Exploration licences are limited to a maximum duration of five years. They shall be renewed for an additional three years at a time if the exploration licence field could not be sufficiently explored, despite scheduled exploration efforts that were coordinated with the competent authority.

(5) Extraction licences or mining proprietorships shall be granted for periods appropriate for extraction in the respective individual case. This period may exceed fifty years only if necessary for the investments ordinarily required for extraction. This period may be extended up to the date on which deposits could be expected to be depleted using practical and systematic extraction methods.

### **Section 17**

#### **Creating mining proprietorships**

(1) A mining proprietorship is created when the mining proprietorship deed is served on the applicant. Service is admissible only if the decision regarding the grant is final and binding. When a mining proprietorship is created, the extraction licence pertaining to the area of the mining proprietorship field expires.

(2) The mining authorization deed shall comprise the deed of grant and a copy of the location map that the competent authority shall ensure conforms to the grant decision. The deed of grant shall contain

1. the name and place of residence of the mining proprietor,
2. the name of the mining proprietorship,
3. an exact description of the size and boundaries of the mining proprietorship field with a reference to the location map,



4. the name of the municipalities in which the mining proprietorship is located,
5. a description of the resources that are the subject of the mining proprietorship,
6. the date of the deed, a seal and a signature.

(3) The competent authority shall ask the land registry office to register the mining proprietorship in the land registry. A certified copy of the mining authorization deed shall be attached to the request.

(4) The land registry office shall inform the competent authority of registry of a new mining proprietorship owner.

### **Section 18 Revocation**

(1) Exploration licences and extraction licences shall be revoked if events occur after such licences are granted that would have resulted in denial of the licences.

(2) Furthermore, an exploration licence shall be revoked if, for reasons attributable to the licence holder, exploration has not commenced one year after grant of the licence or if scheduled exploration is interrupted for more than one year; the competent authority may extend the deadline by one more year for good cause. An exploration licence may be revoked if the exploration licence holder does not apply for an extraction licence even if the requirements have been fulfilled and if an application deadline set by a competent authority has passed.

(3) Furthermore, the extraction licence shall be revoked if extraction has not commenced within three years of grant of the licence or if continuous extraction is interrupted for more than three years. This shall not apply in cases where extraction in the licence field is not commenced or resumed until a later date if necessary for the licence holder to be able to prepare reasonable technical or economic plans, or if there are other reasons for an interruption that are not attributable to the licence holder.

(4) Mining proprietorship shall be revoked if continual extraction has been interrupted for more than ten years. Subsection (3) sentence 2 shall apply mutatis mutandis. The competent authority shall provide written notification of the revocation decision to the parties with rights in rem registered in the land registry. The authority shall ask the land registry office to delete the mining proprietorship as soon as revocation has become valid.

### **Section 19 Revocation of an exploration licence or an extraction licence**

(1) An exploration licence or an extraction licence shall be revoked partially or in its entirety at the request of the holder. The request shall be submitted in writing or orally to the competent authority.

(2) When the notification of revocation is published in the official publication of the competent authority, the exploration licence or extraction licence shall expire in the scope in which it was revoked.

### **Section 20 Revocation of mining proprietorships**

(1) A mining proprietorship shall be revoked at the request of the holder of the mining proprietorship. Partial revocation is not permissible.

(2) The competent authority shall provide written notification of the application for revocation to the parties with rights in rem registered in the land registry. The notification shall contain reference to the right to file an application as provided for in (3) as well as to the fact that revocation will result in expiry of the mining proprietorship. The notification shall be published in the Federal Gazette and in the official publication of the competent authority.

(3) Within three months of publication of the notification, any party holding real rights may apply to have the mining proprietorship auctioned off. An enforceable title is not necessary for filing the application and holding the auction.

(4) If the auction is not applied for within the deadline stipulated in (3) sentence 1, or if the auction does not lead to a sale of the mining proprietorship, the competent authority shall revoke the mining proprietorship; otherwise the application according to (1) shall no longer be processed. The decision on revocation shall be served on the mining proprietorship owner and on the parties with rights in rem registered in the land registry. The municipality in which the mining proprietorship field is located shall be informed of the decision.

(5) If the mining proprietorship has expired, the competent authority shall request the land registry office to delete the mining proprietorship.

### **Section 21**

#### **Participation in exploration**

(1) The competent authority shall inform without delay

1. any commercial exploration licence holder of the subject of an exploration licence for scientific purposes and

2. any commercial exploration licence holder or any extraction licence holder and any holder of a mining proprietorship of the subject of a large-scale exploration licence

if the fields covered by these authorizations completely or partially overlap the field of the exploration licence for scientific purposes or of the large-scale exploration licence, and refer to the same resource.

(2) The competent authority shall make a request as provided for in Section 11 no. 5 if one of the licence holders files an application on its own behalf within six weeks after receipt of the notification according to (1) and proves that it can obtain the funds required for paying its proper share of expenses in accordance with Section 11 no. 5. After expiry of this deadline and if all other requirements set out in sentence 1 are fulfilled, the authority may make a request regarding participation, if the licence holder was unable to make a decision before the deadline passed and if participation is still reasonable for the applicant at the time of the request.

### **Section 22**

#### **Transfer and passing of exploration licences and extraction licences**

(1) Transfer of the exploration licence to a third party or participation of third parties in an exploration or extraction licence shall require the consent of the competent authority. Consent may only be denied if

1. in case of transfer, the requirements of Section 11 nos. 4 to 10 have been fulfilled, also in connection with Section 12 (1) sentence 1, or

2. in case of participation, one of the requirements of Section 11 nos. 4 to 7 have been fulfilled, also in connection with Section 12 (1) sentence 1.

Consent shall be provided in writing.

(2) In case of death of the holder of an exploration licence or an extraction licence the rights under the licence shall pass to the estate. These rights may be exercised by an insolvency executor, a provisional administrator of the estate or an executor for up to ten years after succession. The individuals specified in sentences 1 and 2 shall notify the competent authority without delay of the case of succession. The legal consequences under sentences 1 or 2 shall not apply to any successors or any beneficiaries specified in sentence 2 whose person provides a reason for denial pursuant to Section 11 no. 6, also in connection with Section 12 (1) sentence 1. Sentences 1 to 3 shall apply correspondingly for any other cases of universal succession.

### **Section 23**

#### **Sale of mining proprietorships**

- (1) The legal transaction of selling a mining proprietorship and the corresponding contract under the law of obligations requires permission of the competent authority. Permission shall only be denied if the sale is not in the public interest.
- (2) Permission may also be granted prior to notarial recording of the legal transaction. Permission shall be deemed granted if not denied within two months after receipt of the request for permission. If requested the competent authority shall provide proof of the grant of permission.

## **Subchapter 2** **Consolidation, partition and exchange of mining proprietorships**

### **Section 24** **Admissibility of consolidation**

Mining proprietorship fields may be consolidated if they share common borders and if the mining proprietorship involves the same resources in all fields to be combined.

### **Section 25** **Requirements for consolidation**

The following documents are required for consolidation:

1. a notarial recorded deed of consolidation of the mining proprietorships involved or a corresponding declaration of consolidation from the sole owner of the mining proprietorship; this shall specify the names of the new mining proprietorship and its holders, and if several holders are involved, their respective shares or any other rights in the new mining proprietorship;
2. two copies of a location map of the new mining proprietorship field that complies with the requirements of a mining ordinance pursuant to Section 67;
3. if the mining proprietorship is encumbered in rem, a notarial recorded agreement between the parties holding property rights and the mining proprietorship holders stating that the encumbrances shall be transferred to the new mining proprietorship (Section 27 (1)), and in what manner, and in particular in what order of ranking;
4. the permission pursuant to Section 26.

### **Section 26** **Permission for consolidation, mining authorization deeds**

- (1) Permission may only be denied if
1. the consolidation is inadmissible,
  2. the deeds specified in Section 25 nos. 1 to 3 and the deeds of grant or the deeds issued according to Section 154 (2) are not submitted or are only partially submitted, or
  3. the consolidation is not in the public interest.
- (2) One single mining authorization deed shall be created by combining the permission with the deed stipulated in Section 25 no. 1, a copy of the location map stipulated by Section 25 no. 2, and the deeds of grant or the deeds stipulated in Section 154 (2).

### **Section 27** **Effect of consolidation**

- (1) When the mining authorization deed is served on the applicant, a new mining proprietorship is created in the consolidated mining proprietorship field along with the encumbrances arising from the agreement stipulated in Section 25 no. 3, and the previous mining proprietorship expires.

(2) If the consolidation becomes effective, the competent authority shall request the land registry office to make a correction in the land registry. The request shall be accompanied by a certified copy of the mining authorization deed.

### **Section 28** **Partition**

A mining proprietorship field may be partitioned into independent parcels if the parcels comply with Section 4 (7) and there is no risk that the partition would create field fragmentation, or in particular, would impair practical and systematic extraction of resources. Sections 25 to 27 shall apply with the stipulation that the deeds specified in Section 25 nos. 1 and 2 are required for each partitioned parcel of the mining proprietorship field; however, with the exception of the location maps for the partition, an original and the requisite number of copies or certified copies of the deeds shall be sufficient.

### **Section 29** **Exchange**

Exchange of parcels of mining proprietorship fields is admissible if the parcels to be exchanged each border on the mining proprietorship field into which they are to be consolidated by means of exchange, if there is no risk that the exchange would entail field fragmentation, and in particular, would impair practical and systematic extraction of resources, if the parcels to be exchanged comply with Section 4 (7) and if the mining proprietorship applies to the same resources in all of the parcels. Sections 25 to 27 shall apply mutatis mutandis, with the following stipulations:

1. The names of the mining proprietorships participating in the exchange shall remain unchanged.
2. The deeds specified in Section 25 nos. 1 and 2 are mandatory for each parcel of the mining proprietorship fields involved in the exchange.
3. With the exception of the location maps, an original of each document and the required amount of copies or certified copies of the deeds shall suffice for the exchange.

## **Subchapter 3** **Field royalties and mining royalties**

### **Section 30** **Field royalty**

- (1) The holder of an exploration licence for commercial purposes shall pay an annual field royalty.
- (2) The field royalty shall be paid to the Land in which the exploration licence field is located; Section 137 shall remain unaffected.
- (3) The field royalty for the first year the licence is granted shall be EUR 5 per square kilometer or part thereof and shall increase for each subsequent year by EUR 5 per year, not to exceed EUR 25 per square kilometer or part thereof. The expenses incurred for exploration in the exploration licence field during the year shall be deducted from the field royalty for that year.

### **Section 31** **Mining royalty**

- (1) The holder of an extraction licence shall pay an annual royalty for the freely mineable resources extracted or incidentally extracted from the extraction licence field. This shall also apply to mining proprietorships. A mining royalty must not be paid for resources that are extracted exclusively for technical reasons and are not commercially exploited. Sentence 3 shall not apply to the construction of an underground storage site.
- (2) The mining royalty shall be calculated as ten percent of the average attainable market value of resources of this type extracted under this Act within the assessment period. For

resources without any market value, the competent authority shall determine the price on which the mining royalty shall be based in consultation with experts.

(3) Section 30 (2) shall apply mutatis mutandis.

### **Section 32**

#### **Field and mining royalty calculation, collection and adjustments**

(1) The Land governments shall be authorized to issue ordinances required for executing the provisions of Sections 30 and 31 regarding determination of the market value and the value according to Section 31 (2) sentence 2, as well as regarding collection and payment of the field royalty and the mining royalty. Natural and legal persons may be required to provide information if this is necessary for determining the market value.

(2) The Land governments shall be authorized to issue ordinances for the following purposes for a specified period:

1. to exempt exploration licences, extraction licences and mining proprietorships from the field royalty or mining royalty for specific resources or in specific areas,
2. to specify an amount differing from Section 30 (3) sentence 1 and a different royalty scale for exploration licences for specific resources or in specific areas,
3. to specify a percentage or basis for computation differing from Section 31 (2) for extraction licences and mining proprietorships for specific resources or in specific areas,

if this is required for adaptation to the rules applicable at the time this Act enters into force, for preventing disturbance of overall economic equilibrium, for preventing risks to the competitive position of the exploration or extraction companies, for ensuring a supply of raw materials to the market, for improving the utilization of deposits or for protecting any other national economic interests, or as long as the resources are used in the extraction process. These royalties shall not exceed four times the amounts resulting from Section 30 (3) sentence 1 or Section 31 (2) sentence 1.

(3) The Land governments may issue ordinances transferring the authorization under (1) and (2) to other officials.

### **Subchapter 4**

#### **Notification of discovery**

### **Section 33**

#### **Notification of discovery and compensation**

(1) If a party without an exploration or extraction licence discovers a freely mineable resource and notifies the competent authority without delay of the discovery, this party may request compensation for the expenses it incurred for this discovery from the party granted an extraction licence for this resource based on the notification of discovery. This shall not apply if the resource was discovered in violation of Section 6 or if the location of this resource deposit is already known.

(2) Notification shall provide information on the time and location of discovery and a description of the piece of land, the municipality and the district as well as a description of the type and quality of the discovered resources. The competent authority shall inform the notifying party without delay if an extraction licence is granted.

### **Chapter 2**

#### **Freehold resources**

### **Section 34**

#### **Subject of the permission to explore and extract freehold resources**

Section 7 (1) and Sections 8 and 9 shall apply to granting permission to an owner of real property to incidentally extract other resources, to acquire ownership in them, to construct auxiliary structures and to use third-party mining facilities when exploring and extracting freehold resources as stipulated in this Act

1. unless already provided for under property rights and
2. unless otherwise provided for under Sections 149 to 158

with the corresponding stipulation that the real property to which the property rights refer shall be substituted for the exploration licence field, the extraction licence field and the mining proprietorship field.

### **Chapter 3 Combining fields**

#### **Section 35 Requirements**

The competent authority may, upon request, allow an extraction rights holder to combine fields, thereby granting it the right to expand extraction of a resource in the field specified in its extraction licence (main field) to the field of a neighboring third-party extraction licence granted for the same resource (trans-border extraction) if

1. the applicant can prove that it has earnestly attempted to achieve consensus on trans-border extraction at reasonable terms, and if necessary, by offering suitable possibilities for extraction within its own extraction licences,
2. trans-border extraction is advisable for reasons of mining economy or technology,
3. it is necessary for the common good, in particular for providing resources to the market or for other macroeconomic reasons,
4. it is not expected that any another extraction company can extract the resources located in the neighboring extraction licence field just as economically without combining the fields,
5. resources whose protection is in the public interest will not be impaired by combining fields,
6. the following information and documentation is provided by the applicant:
  - a) a location map with exact coordinates of the main field and the field of the third-party licence, specifically indicating the field to be combined,
  - b) an description of the actual circumstances that are important in assessing the mining economics and technological aspects of field combination,
  - c) information on the work program carried out in the main field and the work program planned for the field of the third-party licence, in particular regarding the technical execution of extraction, the facilities required underground and at the surface and the timeframe,
  - d) proof that funds are available as required for proper execution of trans-border extraction and related activities under Section 2 (1) nos. 1 and 2,
  - e) information on use and sales of the resources to be extracted in the trans-border process, and
  - f) proof that the requirements under nos. 3 and 4 are fulfilled.

#### **Section 36 Procedure**

The provisions on formal administrative procedures set forth in Part V Chapter 1 of the Administrative Procedure Act shall apply to the procedure, with the following stipulations:

1. Any party entitled to extraction in the field of the third-party licence, as well as the holder of rights in rem in the third-party licence shall also be deemed a party to the procedure. If the third-party licence is entirely or partially located in the district of another competent authority, this authority shall also be party to the procedure.

2. A representative shall be appointed ex officio for additional licence holders if they do not respond to the request of the competent authority to appoint a mutual representative within a specific deadline.

3. Efforts shall be made to reach a consensus in the oral hearing. If consensus is reached, this shall be recorded in the minutes of the negotiation. Sections 3 to 13 and 16 to 26 of the Law on Attestations (BeurkG) shall apply mutatis mutandis to the notarial recording. The minutes of the consensus shall be equivalent to a notarial record of the consensus. An agreement to convey may not be submitted to the competent authority.

4. If there is no consensus, the competent authority shall reach a decision on the application. The right to trans-border extraction shall be granted for a specific field, for specific resources and shall be limited to a certain period of time. Section 16 (3) shall apply mutatis mutandis.

If required by statutes of the Länder, the corresponding provisions of their administrative procedure acts shall be substituted for the provisions on the formal administrative procedure pursuant to Part V Chapter 1 of the Administrative Procedure Act.

### **Section 37 Compensation**

(1) The party granted the right to trans-border extraction shall pay compensation for this right to the holder of the third-party licence. If there is no consensus, compensation shall be determined in the decision on granting the right to trans-border extraction.

(2) Compensation shall be paid for the loss of rights arising from the trans-border extraction and for any other ensuing economic loss. If the asset is being utilized at the time of the decision, the extent of impairment to the asset shall be the basis for compensation. If the compensation beneficiary has taken measures to improve utilization, and it can be proven that the measures have sustainably enhanced utilization, this shall be taken into consideration. Compensation shall be paid in installments, if requested by the third-party licence holder. If the third-party licence is encumbered with third-party rights in rem, Articles 52 and 53 of the Introductory Act to the German Civil Code shall apply mutatis mutandis.

### **Section 38 Combining fields, revocation, mining royalty**

(1) Sections 8, 15, 16 (5) and Section 18 (1) and (3) shall apply mutatis mutandis to the right to trans-border extraction. Section 31 shall apply to the extent in which it would apply to the holder of the third-party licence.

(2) The right shall only be exercised if the holder

1. has paid compensation or

2. in case of compensation in installments, has paid the first installment and has provided sufficient security for the remaining installments.

## **Part III Exploration, Extraction and Treatment**

### **Chapter 1 General provisions on exploration and extraction**

#### **Subchapter 1 Exploration**

### **Section 39**

#### **Consent of the property owner, consent of other authorities, compensation**

(1) To use a piece of land owned by a third party for the purpose of exploration, the following must be obtained beforehand:

1. consent of the real property owner and the other licence holders, and
2. if the piece of land is reserved for public use either by statute or as a result of a statute, the consent of the authority responsible for compliance with this use requirement.

Section 905 sentence 2 of the German Civil Code shall remain unaffected.

(2) For a piece of land falling under (1) sentence 1 no. 2:

1. consent as stipulated in (1) sentence 1 no.1 is not required if the piece of land exclusively serves the public use to which it is dedicated,
2. consent under (1) sentence 1 no. 2 is not required if
  - a) the type and form of activity carried out for exploration purposes or intended for such are no different than the activities that may be carried out in the context of the dedication, or are not affected by the dedication, or
  - b) if, with regard to permission for the activities, a special official licence, permit or consent is provided for and was granted by the authority responsible for such.

(3) The exploration licence holder shall restore the third-party real property to its previous state after conclusion of the exploratory operations, unless the competent authority decides that maintaining alterations to the land is admissible for subsequent extraction operations, or if the competent authority has ordered a departure from the previous state for the purpose of restoring usability of the property.

(4) The exploration licence holder shall pay compensation to the real property owner and other beneficial owners for any economic loss caused by exploratory operations and not compensated by restoration of the previous state or other measures as stipulated in (3). The claim to compensation shall serve to satisfy the liability toward the owners of rights in rem with which the piece of land may be encumbered, whereby Sections 52 and 53 of the Introductory Act to the German Civil Code shall apply mutatis mutandis.

(5) The real property owner and other beneficial owners may request appropriate security for securing their claims under (3) and (4).

### **Section 40**

#### **Dispute resolution**

(1) If consent required by Section 39 (1) sentence 1 no. 1 is denied, the competent authority may be requested to issue a decision, if the public interest and especially the search for usable deposits makes exploration necessary. If exploration is to be carried out under buildings, on commercial property, in gardens or in enclosed courtyards, a decision of the competent authority may only replace consent in case of preponderance of public interest.

(2) If requested, the competent authority shall also determine the amount of the claim to compensation (Section 39 (4)) or of security (Section 39 (5)), if there is no consensus in this respect; the costs of this procedure shall be borne by the exploration licence holder. Exploration may only be commenced or resumed when compensation has been paid, or security has been deposited in escrow.

### **Section 41**

#### **Extraction of resources during exploration**

The extraction licence holder is entitled to extract resources if the competent authority determines that they must be extracted in the course of exploration efforts as planned, for reasons relating to mining technology, safety or for other reasons. The right of the



exploration licence holder to extract other freely mineable resources on its own land shall remain unaffected.

## **Subchapter 2 Extraction**

### **Section 42**

#### **Incidental extraction of resources during extraction of freely mineable resources**

(1) During the process of extracting freely mineable resources, the extraction licence holder shall be entitled to extract other resources in the field specified in the extraction licence if the competent authority determines that it is only possible to extract the licenced resources together with these other resources in the course of exploration efforts as planned, for reasons relating to mining technology or safety. The extraction licence holder shall inform without delay any other parties with rights to these resources of the decision taken under sentence 1.

(2) The extraction licence holder shall offer to surrender

1. any incidentally extracted freely mineable resources subject to third-party appropriation rights, and

2. any incidentally extracted freehold resources

to the respective other licence holder in return for reimbursement of any expenses incurred for extraction and for any treatment required and any mining fees to be paid for extraction, and to surrender these resources on request. The other licence holder may request surrender only within two months of acknowledgment as stipulated in (1) sentence 2. There is no obligation to surrender incidentally extracted resources until a request has been submitted. The same shall apply if

1. it is not possible to separate the incidentally extracted resources from the other resources or if the expense required to do so is unreasonable, or

2. the incidentally extracted resources are used to secure the extraction licence holder's own operations or to secure the surface in these operations.

If resources to be surrendered cannot be separated or if separation is not reasonable because of the cost, and if several licence holders are entitled to the resources, the extraction licence holder shall surrender to each licence holder the portion corresponding to its licence.

(3) If it is unreasonable for the respective other licence holder to accept the resources to be surrendered, it may request a reasonable settlement in money for these resources from the extraction licence holder, if the latter can exploit the resources. Expenses incurred for extraction and any treatment required as well as any mining royalties to be paid for extraction shall be set off against the settlement amount.

(4) Upon request of the extraction licence holder or any other licence holder the competent authority shall determine whether or not it is possible to separate the resources and shall determine the size of the individual shares.

### **Section 43**

#### **Incidental extraction of resources during extraction of freehold resources**

Section 42 shall apply mutatis mutandis to the incidental extraction of freely mineable resources during extraction of freehold resources.

### **Section 44**

#### **Right to construct auxiliary structures**

(1) A holder of an extraction licence shall be entitled to erect underground installations outside of the boundaries of the extraction licence field that serve to improve extraction operations technically or economically, in particular for drainage or mine ventilation (auxiliary

structures). This shall not apply if the auxiliary structure is to be erected in the field of another extraction licence, and the extraction operations of the other extraction licence holder are thereby endangered or substantially impaired.

(2) The licence holder authorized to construct auxiliary structures shall pay financial compensation to the other extraction licence holder for any damage incurred as a result of the auxiliary structure.

#### **Section 45**

##### **Incidental extraction of resources during construction of auxiliary structures**

(1) The licence holder authorized to construct auxiliary structures is entitled to extract all resources that a competent authority determines must be incidentally stripped when constructing an auxiliary structure. The licence holder shall inform without delay any other individuals with rights to these resources of the decision taken under sentence 1.

(2) The licence holder authorized to construct auxiliary structures shall surrender without compensation any freely mineable resources that are subject to third-party appropriation rights, and third-party not freely mineable resources, if these other entitled third-parties request such within one month after acknowledgment pursuant to (1) sentence 2. Section 42 (2) sentences 3 to 5 and (4) shall apply mutatis mutandis.

#### **Section 46**

##### **Auxiliary structures for mining proprietorships**

Any auxiliary structure properly constructed for a mining proprietorship shall be deemed an integral part of it. Entry in the land registry is not required.

#### **Section 47**

##### **Use of third-party mining structures**

(1) An extraction licence holder is entitled to use third-party underground structures (mining structures) if

1. provisions of Section 44 (1) sentence 1 have been fulfilled, and
2. the holder assumes an appropriate portion of the expenses for construction and maintenance of the mining structures being used.

Sentence 1 shall not apply to mining structures used for purposes other than exploration and extraction of freely mineable resources or freehold resources.

(2) If a mining structure can be properly used as stipulated in (1) sentence 1 only by changing the mining structure and if the third-party's authorized extraction operations are not endangered or substantially impaired, the other party shall at its discretion either carry out the change itself or tolerate it. The extraction licence holder shall bear the expenses incurred for the change. Payment of expenses as stipulated in (1) sentence 1 no. 2 is not required if the mining structure is no longer being used by the other party; in this case the extraction licence holder shall pay all maintenance expenses.

(3) The extraction licence holder shall pay compensation to the other authorized party for any damage incurred by use.

(4) In case of dispute and if requested, the competent authority shall make a decision on rights of use.

### **Subchapter 3**

#### **Prohibitions and restrictions**

#### **Section 48**

##### **General prohibitions and restrictions**

(1) Laws and regulations prohibiting or restricting activities carried out on real property that could serve exploration or extraction purposes shall remain unaffected if the land is reserved for public use either by statute or as a result of a statute, or is protected in the interest of

public use. When applying these provisions it is important that exploration and extraction are impaired as little as possible.

(2) In cases other than those provided for in (1) and Section 15, the competent authority responsible for approving operating plans may restrict or deny exploration or extraction, if they oppose overriding public interest, other official regulations notwithstanding. In the assessment of whether a restriction or denial must be imposed, consideration must be given to the goals of spatial planning in the case of spatially significant projects. If the public interest also includes protection of third-party rights, the competent authority responsible for approval of operating plans may publicly display the plan if it is expected that more than 300 people will be affected or if the scope of those affected cannot be fully assessed. Section 73 (3), (4) and (5) sentences 1 and 2 nos. 1, 2 and 4 letter b of the Administrative Procedure Act shall apply mutatis mutandis, with the stipulation that the competent authority shall be substituted for the municipality. Delayed complaints shall not be permitted. This shall be pointed out in the announcement.

#### **Section 49**

##### **Restriction of exploration on the continental shelf and within coastal waters**

Exploration on the continental shelf and coastal waters is inadmissible whenever it

1. impairs the operation or effectiveness of shipping installations or signals,
2. hinders the laying, maintenance or operation of submarine cables or pipelines, as well as oceanographic or other scientific research, more than is unavoidable under the circumstances,
3. unreasonably impairs use of shipping lanes, maritime traffic or fishing, or
4. excessively endangers flora and fauna as well as bodies of water as an integral part of ecology.

#### **Chapter 2**

##### **Notification, operating plan**

#### **Section 50**

##### **Notification**

(1) The entrepreneur shall notify the competent authority of construction and commencement of

1. exploration operations,
2. extraction operations and
3. treatment operations

in due time, at the latest two weeks prior to commencement of intended activities; notification shall include the day construction or operations commence. The activities and facilities described in Section 2 (1) shall also be deemed operations. The notification requirement is not necessary if an operating plan pursuant to Section 52 has been submitted.

(2) Subsection (1) shall apply mutatis mutandis to termination of operations with the exception of cases described in Section 57 (1) sentence 1 and (2). Section 57 (1) sentence 2 shall remain unaffected.

(3) Entrepreneurs not required to submit an operating plan pursuant to Section 51 shall attach to the notification of construction or commencement of extraction operations an extraction plan that includes all signification information on planned extraction, in particular:

1. a description of the resources to be extracted,
2. a map drawn to a suitable scale with an exact indication of the field in which resources are to be extracted,

3. information regarding the planned work program, facilities both underground and on the surface and the schedule,

4. information regarding measures for restoring usability of the surface during extraction and related preventive measures for the period after termination of operations.

The competent authority shall be notified of significant changes to the extraction plan without delay.

### **Section 51 Operating plan requirements**

(1) Exploration operations, extraction operations and treatment operations shall be erected, carried out and terminated only on the basis of plans (operating plans) that have been prepared by the entrepreneur and approved by the competent authority. The activities and facilities described in Section 2 (1) shall also be deemed operations. The operating plan requirement shall also apply to termination of operations due to withdrawal or revocation of an exploration or extraction licence or a mining proprietorship, as well as to expiration of any other mining rights.

(2) Subsection (1) shall not apply to exploration operations that neither dig pits in the surface nor use machines, carry out work underground or implement explosive materials or materials intended for creating explosions.

(3) The competent authority may waive the operating plan requirement for low-hazard or insignificant operations either entirely or partly or for a specific period of time, if employees and third parties can be protected and the surface restored pursuant to this Act and to ordinances created on the basis of this Act without an operating plan. This shall not apply to erecting and shutting down operations nor to operations in the area of the continental shelf.

### **Section 52 Operating plans for erecting and operating mines**

(1) Main operating plans for erection and operation of a mine shall be prepared for a timeframe not to exceed two years. An interruption of operations lasting up to two years shall be deemed continuation of operations, and a longer interruption shall be deemed such only if approved of by the competent authority.

(2) The competent authority may request that

1. general operating plans cover a longer specified timeframe, depending on individual circumstances, and must include general information on the project, its technical execution and projected timeframe;

2. special operating plans be prepared for specific parts of operations or for specific projects.

(2a) A general operating plan is required and a planning approval procedure pursuant to the provisions of Sections 57a and 57b shall be executed for its approval if a project in line with the Ordinance pursuant to Section 57c in conjunction with the provisions of Part 2 Division 1 of the Act on the Assessment of Environmental Impacts requires an environmental impact assessment. In the case of a project which on its own or in combination with other projects or plans could pose a serious risk to a Natura 2000 area, the environmental impact assessment pursuant to Section 34 subsection 1 of the Federal Nature Conservation Act shall be undertaken together with the environmental impact assessment in the planning approval procedure pursuant to sentence 1. Any preventive pollution control measures required by the environmental impact assessment that go beyond the approval requirements set out in Section 55 and in provisions of other laws applicable to the project are deemed public interest as provided for in Section 48 (2).

(2b) For projects and any necessary subsequent measures that are carried out in separate steps or phases for reasons of geographic or temporal scope, the general operating plan as stipulated in (2a) sentence 1 may be prepared and approved in accordance with the steps or

phases, unless this makes it entirely or partly impossible to correctly assess the substantial impact of the project as a whole on the environment. Projects requiring a special procedure as provided for in Section 54 (2) sentence 3 shall not be subject to the provisions of (2a), Section 11 (1) of the Water Resources Act and Section 17 (10) of the Nature Conservation Act and corresponding provisions in other laws and regulations on methods for conducting the environmental impact assessment, if this special procedure guarantees an environmental impact assessment that complies with the requirements of this Act. The results of this environmental impact assessment shall be factored into the approval process, authorizations or any other official decisions on the admissibility of the project in accordance with the applicable provisions.

(2c) The provisions of (2a) and (2b) shall also apply to any substantial changes to a project.

(2d) In the case of projects pursuant to (2a) sentence 1, the competent authority must stipulate, in line with the provisions applicable to the project, which measures the entrepreneur must take to monitor serious negative effects on the environment. The stipulation can also be made in the context of the approval of the main operating plan, special operating plan or closure plan. In the selection of the type of parameters to be monitored and the duration of the monitoring, particular consideration must be given to the type, location and scope of the project and the extent of its impact on the environment in line with the applicable provisions.

(3) For work and facilities that must be carried out, erected or operated by several companies according to uniform criteria, the entrepreneurs involved shall prepare joint operating plans if requested by the competent authority.

(4) The operating plans shall include a description of the scope, technical execution and duration of the project as well as proof that the requirements stipulated in Section 55 (1) sentence 1 nos. 1 and 3 to 13 have been fulfilled. They may be extended, amended and changed.

(5) For certain work and facilities requiring special approval according to ordinances issued on the basis of this Act or that shall be generally approved, the main operating plans and special operating plans may include proof that permission or approval has been given or has been applied for instead of the descriptions and proof stipulated by (4) sentence 1.

Footnote: Section 52 subsection 2a to 2c: cf. Section 171a Atomic Energy Act regarding application

### **Section 53**

#### **Operating plan for termination of operations, operating log**

(1) A closure plan shall be prepared for termination of operations, including an exact description of the technical execution and duration of the planned termination of operations, proof that the requirements set out in Section 55 (1) sentence 1 nos. 3 to 13 and (2) have been met, and, in cases not covered by Section 55 (2) sentence 1 no. 3, also information regarding removal of the operational structures and facilities or their further use. Closure plans may be amended and changed.

(2) An operating log in duplicate shall accompany the closure plan for extraction operations. This shall include:

1. the name of the extraction company and a description of the municipality and the district in which the operations are located,
2. the name and address of the entrepreneur and, if the extraction licence holder is a different party, the name and address of this licence holder,
3. a description of the extracted resources and any available chemical analyses, in case of coal and hydrocarbons the calorific value, a description of any other resources discovered and related information gained during operations, as well as information on difficulties arising during mining operations in technical and safety aspects,
4. information on the intended use of the extracted resources,

5. a description of the technical and economic operational situation, and, if there is no official diagram of the mine, a drawing of operations,
6. the date operations commenced and the date they were terminated, as well as the reasons for termination,
7. a geological description of the deposit and an inventory of resources including mine dumps,
8. a description of the treatment facilities (type, capacity and recovery of finished products and any available chemical analyses (metal content in the tailings)),
9. a description of the traffic situation and the major aspects of extraction operations and how they relate to removal of the products to be marketed.

Sentence 1 shall not apply to extraction operations operated as open pit mines, unless the competent authority determines that the deposits will be valuable in the future.

#### **Section 54**

##### **Approval procedure**

- (1) The entrepreneur shall submit for approval the operating plan and any extensions, amendments or changes to it prior to commencement of the planned work.
- (2) If the work described in the operating plan affects the scope of functions of other authorities or of the municipalities in their function as planning authorities, they shall be involved in the project prior to approval of the operating plan by the competent authority. The Land governments may issue ordinances requiring further involvement of the municipalities if an operating plan describes measures for intermediate or permanent storage of resources, surrounding rock or other material. Sentence 2 shall not apply to extraction carried out in accordance with an operating plan that defines in particular the boundaries of extraction and tailing sites and that has been approved in a special planning procedure under a federal or Land statute.

#### **Section 55**

##### **Approval of operating plans**

- (1) An operating plan as provided for in Section 52 shall be approved if
  1. proof of any licences required for exploration or extraction of resources as specified in the operating plan has been provided,
  2. there is no reason to believe that
    - a) the entrepreneur, or in the case of legal persons and partnerships, the individuals authorized to represent them according to statute, by-laws or articles of association are unreliable and, if there is no representative as stipulated by letter b, also do not have the requisite technical knowledge or physical capability,
    - b) an individual appointed to manage or supervise the operations or part of the operations to be approved is unreliable or does not have the requisite technical knowledge or physical capability,
  3. necessary precautions are taken against risk to human health, life or to equipment and materials of employees or third parties during operations, in particular by taking measures corresponding to generally accepted safety technology, as well as compliance with the regulations issued as a result of this Act or other applicable regulations and other labor protection regulations applicable to construction and operation of a mine,
  4. no impairment of resources whose protection is in the public interest will occur,
  5. the protection of the surface with respect to personal safety and safety of public transportation has been ensured,

6. any waste resulting from operations is properly used or removed,
7. the requisite preparatory measures for restoring usability of the surface have been taken in the scope required,
8. sufficient efforts have been made to ensure that the safety of any mine already in proper operation pursuant to Sections 50 and 51 is not endangered,
9. there are no harmful effects to be expected from exploration or extraction, and additionally, in case of an operating plan for mining in the area of the continental shelf or in coastal waters,
10. the operation and effectiveness of shipping installations or signals are not impaired,
11. shipping lanes and airspace use, maritime traffic, fishing, or flora and fauna are not unreasonably impaired,
12. installation, maintenance or operation of submarine cables or pipelines, as well as oceanographic or other scientific research, are not hindered more than is unavoidable under the circumstances, and
13. damaging effects on the ocean are kept to an absolute minimum.

Sentence 1 no. 2 shall not apply to general operating plans.

(2) The provisions of (1) sentence 1 nos. 2 to 13 shall apply to granting approval to a closure plan with the stipulation that

1. third parties are protected from risk to human health or life caused by operations even after they have been terminated and
2. the surface of the area used by the terminated operations is restored, and
3. mining facilities are completely removed from the area of the continental shelf and coastal waters, down to the soil of the seabed. If mining operations are not completely terminated, fulfillment of the requirements set out in sentence 1 shall only be requested if this will not preclude resumption of mining operations.

## **Section 56**

### **Form and content of approval, provision of security**

(1) Grant of approval of an operating plan shall be made in writing. The subsequent addition, change or expansion of requirements shall be admissible, if

1. this is reasonable for the entrepreneur and the type of facilities it operates, and
2. is feasible in view of good engineering practice

to the extent the requirements stipulated in Section 55 (1) sentence 1 nos. 2 to 13 and (2) must be fulfilled.

(2) The competent authority may make approval dependent upon provision of security, if this is necessary to secure the requirements specified in Section 55 (1) sentence 1 nos. 3 to 13 and (2). The competent authority may refuse to accept proof of appropriate insurance of the entrepreneur with an insurance company approved for business in the territorial scope of this Act as provision of security only if the coverage amount is insufficient. The competent authority shall make decisions on when to release the security.

(3) The provisions of (1) and (2) shall apply mutatis mutandis to any extensions, amendments or changes to an operating plan.

## **Section 57**

### **Deviations from an approved operating plan**

(1) If danger to the lives or health of employees or third parties can only be prevented by immediate deviation from an approved operating plan or by immediate measures to permanently shut down operations, the deviation or the measures to shut down may be carried out prior to approval of the operating plan required for such measures, at the express instructions of the entrepreneur. The entrepreneur shall notify the competent authority without delay of these instructions.

(2) If unforeseeable events necessitate immediate deviations from an approved operating plan to prevent damage to important goods and assets, (1) shall apply mutatis mutandis, with the stipulation that the safety of operations may not be impaired.

(3) The approval of the changes to the operating plan or the closure plan required by the deviation shall be applied for without delay.

### **Section 57a**

#### **Planning approval procedure, environmental impact assessment**

(1) The planning approval procedure required by Section 52 (2a) shall be substituted for the procedure stipulated in Section 54 and 56 (1). The authority responsible for approving operating plans shall be the consultation authority and the planning approval authority. If mining is planned for the area of the continental shelf, the competent authority shall be substituted for the municipality when applying the provisions of administrative procedure acts for planning approval procedures; the area affected by the project shall be assumed to be the registered office of this authority. Sections 15 to 27 and 31 of the Act on the Assessment of Environmental Impacts and the following rules shall apply to the procedure.

(2) The general operating plan shall comply with requirements for conducting the planning approval procedure, while taking into account the application requirements for the official decision included in the planning approval. The general operating plan must contain all the details of significance for the environmental impact assessment in the form of a report on the likely environmental impact of the project (EIA report) in line with Section 16 of the Act on the Assessment of Environmental Impacts and the Ordinance pursuant to Section 57c. Along with the general operating plan, the entrepreneur shall submit a plan suitable for public display.

(3) If the authorities involved have access to information that would be useful for providing the information required by (2) sentences 2 and 3, they shall inform the entrepreneur and if requested, place this information at its disposal. This shall apply in particular to information originating from a previous regional planning assessment; the authority responsible for this assessment shall provide the authority responsible according to (1) sentence 2 with access to any documents from this assessment procedure that could be of importance for the environmental impact assessment.

(4) The decision on official approval of the plan shall be made subject to the provisions applicable to the decisions included in the approval. The relationship between the entrepreneur and the parties concerned and protection of third-party needs as provided for in mining law shall be determined according to the applicable provisions of this Act; this shall also apply to any repeal of the planning approval.

(5) Regarding third-party interests affected by the project and the scope of functions of authorities involved as provided for in Section 54 (2), the legal effect of the planning approval shall also extend to the approval and extension of the main, special and closure plans required to execute the general operating plan, if a decision has been made regarding any objections relating hereto, or could have been made if objections had been raised in due time; a planning approval shall exclude decisions under Section 48 (2), except in the cases regarding protection of third-party rights as specified in Section 48 (2) sentence 2.

(6) For the procedure for the cross-border environmental impact assessment, the provisions of Part 5 of the Act on the Assessment of Environmental Impacts must be applied.

### **Section 57b**

#### **Early commencement, preliminary approval, partial approval, precedence**



(1) The competent authority may approve commencement of the project prior to the planning approval procedure while reserving the right to revoke this approval, if

1. it is expected that the approval decision will be made in favour of the entrepreneur,
2. there is no concern regarding irreversible damage to nature and the landscape,
3. early commencement is in the public interest or in the legitimate interest of the entrepreneur, and
4. the entrepreneur agrees to compensate any damage incurred by execution of the project up to the approval decision, and, if the project is not approved, to restore the area affected to the original condition.

(2) Provisions regarding preliminary approval and partial approvals that are stipulated in other statutes applying to official decisions included in the official approval shall apply *mutatis mutandis*, with the stipulation that

1. a decision based on these provisions may only be made after an environmental impact assessment of the object of the preliminary approval has been conducted, and shall take into consideration the environmental impact of the entire project that can be determined in the respective planning phase,
2. the authority may reserve to right to make a final decision in the planning approval, and
3. a new environmental impact assessment shall be conducted if there are any aspects of the project not previously considered when assessing the environmental impact, or environmental impacts have become evident that were not previously factored in.

(3) If for a project subject to Section 52 (2a) a planning approval procedure or similar official decisions are also required according to other provisions, only the procedure pursuant to Sections 57a to 57c shall be conducted. In the cases described in Section 126 (3), Section 9b of the Atomic Energy Act shall take precedence. If planning approval procedures are required for follow-up action under other provisions, the procedure shall be conducted accordingly, pursuant to the other provisions.

### **Section 57c**

#### **Authorization to issue ordinances**

The Federal Ministry for Economic Affairs and Energy is authorized, with the consent of the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety, to issue ordinances with the approval of the Bundesrat stipulating

1. which projects requiring operating plans and having a possible major impact on the environment will require an environmental impact assessment, taking into account any acts of the Council or the Commission of the European Communities,
2. what specific information must be provided in the EIA report, which requirements this information shall meet, and which documents shall be supplied,
3. under what circumstances and according to which procedure the competent authorities of neighbouring countries can be involved in the environmental impact assessment.

The ordinance may also define groups or types of projects for determining which projects fall under sentence 1 no. 1, by setting thresholds and other criteria. In an ordinance pursuant to sentence 1 no. 2, it shall in particular be possible to stipulate which information pursuant to Annex 4 of the Act on the Assessment of Environmental Impacts must be contained in the EIA report for certain projects.

### **Section 57d**

#### **Approval procedure for potentially hazardous projects**

(1) When an approval is made of an operating plan to build or alter an operation, a general or special operating plan must be required and the public must be involved in accordance with Section 23b subsection 2 of the Federal Immission Control Act if

1. the building or operation is potentially hazardous or a potentially hazardous alteration is being made to a facility pursuant to Section 3 subsection 5b of the Federal Immission Control Act which is an establishment or part of an establishment pursuant to Section 3 subsection 5a of the Federal Immission Control Act and which is not subject to approval pursuant to the Federal Immission Control Act,

2. due to the potentially hazardous building and the operation or to the potentially hazardous alteration, the appropriate safety distance to neighbouring risk receptors pursuant to Section 3 subsection 5c of the Federal Immission Control Act is not complied with for the first time, a safety distance which is already not being complied with is reduced further, or the level of the hazard is substantially increased, and

3. no involvement of the public is envisaged in the context of a planning approval procedure pursuant to Section 52 subsection 2a sentence 1.

Section 18 of the Twelfth Ordinance for the Implementation of the Federal Immission Control Act shall be applied with the proviso that the application for the approval of an operating plan replaces the application pursuant to Section 23b subsection 1 of the Federal Immission Control Act. Requirements pursuant to Section 22 of the Federal Immission Control Act and the ordinances issued on the basis of Section 23 of the Federal Immission Control Act are, to the extent that they exceed the requirements pursuant to Section 55, public interests within the meaning of Section 48 subsection 2 sentence 1.

(2) In the case of projects which fulfil the preconditions of subsection 1 sentence 1 nos. 1 and 2 and in which the involvement of the public takes place pursuant to the provisions cited in subsection 1 sentence 1 number 3, the involvement of the public shall take place with the proviso that the scope of the documents, reports and recommendations shall be determined in accordance with Section 23b subsection 2 sentence 2 of the Federal Immission Control Act. Here, the regulations of Section 18 of the Twelfth Ordinance for the Implementation of the Federal Immission Control Act shall be applied mutatis mutandis with the proviso that

1. the application for the approval of an operating plan replaces the application pursuant to Section 23b subsection 1 of the Federal Immission Control Act and

2. the deadline in force in the procedure pursuant to Section 52 subsection 2a sentence 1 shall take the place of the deadline cited in Section 18 subsection 2 no. 4 of the Twelfth Ordinance for the Implementation of the Federal Immission Control Act.

3. and 4. (repealed)

(1) sentence 3 shall be applied.

(3) Subsection 1 sentence 1 and 2 and subsection 2 sentence 1 and 2 shall not apply to the extent that the requirement to maintain the appropriate safety distance has already been taken in to account at the level of spatially significant planning or a spatially significant measure in the form of binding requirements.

### **Chapter 3 Responsible persons**

#### **Section 58 Responsible persons**

(1) The individuals responsible for fulfilling obligations under this Act, under the mining ordinances issued on the basis of Sections 65 to 67 or under mining ordinances maintained in accordance with Section 176 (3), under administrative acts and under approved operating plans for proper erection, operation and closure of mining operations (responsible persons)

shall be, unless otherwise provided for in this Act or any ordinances based on this Act, the following:

1. the entrepreneur, or in case of legal persons and partnerships, the individuals authorized to represent them by statute, by-laws or articles of association, and
2. the individuals appointed to manage or supervise the mining operation or parts of the operations, within the scope of their responsibilities and powers.

(2) If the mining operation has been terminated, the exploration licence holder or the extraction licence holder shall also be deemed responsible persons, unless that individual is not legally able to fulfill the obligations set out in (1). If the exploration or extraction licence has expired after entry into force of this Act, the licence holder at the time of expiry shall be substituted for the holder of this licence.

### **Section 59**

#### **Employment of responsible persons**

(1) Only those individuals who are reliable and have the technical knowledge and physical capability required to carry out their functions and powers may be deemed responsible persons as provided for in Section 58 (1) no. 2.

(2) A sufficient number of responsible persons as provided for in Section 58 (1) no. 2 shall be appointed as required for proper and safe operation of the mine. The functions and powers of the responsible persons shall be clearly and comprehensively defined and coordinated such that proper cooperation is possible.

### **Section 60**

#### **Appointment and dismissal of responsible persons, notification of names**

(1) Appointment and dismissal of responsible persons shall be declared in writing. In cases justifying deviation from an approved operating plan according to Section 57 (1) sentence and (2), the declaration may also be made orally, and shall be confirmed in writing without delay. The appointment shall describe exactly the functions and powers; the powers must correspond to the functions.

(2) The names of the responsible persons shall be provided to the competent authority without delay after appointment, along with information on their position in the company and their educational background. Any changes of their position in the company or departure of responsible persons shall be reported to the competent authority without delay.

### **Section 61**

#### **Basic duties**

(1) The entrepreneur is responsible for proper management of operations; it is its duty to ensure safe and orderly operations. It is obligated

1. to ensure proper construction of the mine and proper operations, especially
  - a) to take measures and precautions required to protect employees and third parties against risk to human life, health or to equipment and materials in compliance with generally accepted policies regarding safety, industrial medicine and occupational hygiene, as well as with other proven findings relating to ergonomics, to the extent possible in the particular operation,
  - b) to ensure by means of internal company directives that the responsible persons can perform their functions and exercise their powers,
2. to take suitable measures for preventing danger or saving injured persons in situations or events during operations that could pose or do pose a direct risk to the health or lives of employees or third persons, and

3. to provide the necessary professional help by deploying the company's own employees and equipment in situations or events described in no. 2 that occur in neighboring mines of other companies, to the extent feasible.

(2) The entrepreneur is furthermore obligated to inform the responsible persons of all administrative acts involving the construction, management or closure of the mine, including the relevant documentation, to the extent that their functions and powers are affected. The entrepreneur shall ensure that operational plans and approvals are available at all times for viewing by the responsible persons.

### **Section 62**

#### **Transferability of certain duties and powers**

The entrepreneur may transfer

1. the duties arising from Section 51 (1), Sections 52 and 54 (1), Section 57 (1) sentence 2 and (2), Section 61 (1) sentence 1 second part, sentence 2 and (2), and from Section 74 (3), as well as

2. the powers arising from Section 57 (1) and (2) and other powers arising from this provision

to responsible persons. The entrepreneur's duties under Section 61 (1) sentence 1 second part and sentence 2 shall remain in effect, also if responsible persons have been appointed.

### **Chapter 4**

#### **Other provisions applicable to operations**

### **Section 63**

#### **Mine plans**

(1) The entrepreneur shall prepare mine plans in duplicate for each extraction operation and underground exploration operation, and update them at the intervals stipulated in the ordinance pursuant to Section 67. This shall apply to exploration operations at the surface only if required by ordinances pursuant to Section 67. Ordinances pursuant to Section 67 may permit exceptions from sentence 1 for low-hazard or insignificant operations, if exploration and extraction has a small scope and if restoration of the surface pursuant to this Act and to regulations based on this Act or to maintained regulations is also possible without mine plans.

(2) The mine plans shall include

1. the mine map and

2. any other documents such as sketches, maps and plans.

The content and form of the mine plans as well as the documentation required by sentence 1 no. 2 for specific types of operation are stipulated in a ordinance based on Section 67.

(3) One copy of the mine plans shall be submitted to the competent authority, and the other shall be stored in a suitable location either in the mine or near it. If the competent authority gives consent, an exception may be made to the requirement of submission of the documents specified in (2) sentence 1 no. 2.

(4) If party can prove to the competent authority that it has suffered damage from mining, it is entitled to view the relevant part of the mine map copy filed with the authority. The entrepreneur shall be given the opportunity to be present at the viewing.

### **Section 64**

#### **Mine surveyors**

(1) The mine plans required for underground exploration or extraction operations shall be prepared and updated by a mine surveyor approved by the competent authority. Other documents required for other operations as provided for in Section 63 (2) sentence 1 no. 2

may also be prepared and updated by other individuals approved by the competent authority.

(2) Mine surveyors may conduct their professional work independently. The mine surveyor is authorized to certify documents with the presumption of legal force within his geographical area of responsibility.

(3) The Länder may issue regulations on qualifications required for mine surveyors.

#### **Part IV Authority to Issue Mining Ordinances**

##### **Section 65**

##### **Notification, permission, general approval, assessment**

In order to protect the legal assets and concerns set forth in Section 55 (1) sentence 1 nos. 3 and 4, and to the extent necessary to simplify the approval procedure for operating plans with a view to proper and safe operation of the mine, ordinances (mining ordinances) may be issued that provide for the following:

1. that notification shall be given of specific work such as erection, construction and start-up of specific facilities, changes made and other related circumstances, and which documents are to be attached to the notification,
2. that specific work such as erection or construction of specific facilities, their operation and making changes shall be exempted from the obligation to file an operating plan for such, but shall require permission,
3. that specific facilities and materials may be generally approved after being tested according to type of construction or suitability by an authority designated in the mining ordinance or an expert accredited by the competent authority; which notifications shall be filed in cases of general approval and which documents shall be attached to these notifications,
4. that specific facilities shall be subject to testing or acceptance prior to start of operation and after maintenance, and to regular repeated tests and tests required by the competent authority that are to be conducted by an authority designated by the mining ordinance, by a specifically designated responsible person or an expert accredited by the competent authority,
5. that approvals and general approvals as provided for in nos. 2 and 3 shall be conditional upon specific prerequisites regarding persons and expert knowledge,
6. that accreditation of a person or authority as an expert as provided for in nos. 3 and 4 shall be made contingent upon specific personal traits and technical knowledge; in particular regarding requirements for education, professional knowledge and abilities, reliability and neutrality, and requirements regarding technical equipment and coordination of various experts or authorities. In order to enforce acts of the Council or Commission of the European Communities, ordinances (mining ordinances) may be issued for facilities and materials that go beyond sentence 1, also to protect legal interests other than those specified there, with regard to safety-related quality requirements and other requirements for bringing to market and for intended use, especially tests, production monitoring, certificates, labels, requirements for storage and notification, and official measures.

##### **Section 66**

##### **Protective measures, restoring usability, technical knowledge**

To protect employees and third parties against dangers in the mine and to protect the legal interests specified in Section 55 (1) sentence 1 nos. 2 to 13, ordinances (mining ordinances) may be issued stipulating

1. that facilities of the type specified in Section 2 (1) no. 3 must fulfill certain requirements regarding

- a) selection of the site, and
- b) erection, equipment, maintenance and operation,

2. which requirements must be fulfilled by exploration, extraction and treatment processes,

3. that safety zones must be set up in the area of the continental shelf and coastal waters, and where, how to install, equip and mark them,

4. that

- a) certain groups of persons are not allowed to do certain types of work or only with restrictions,
- b) employment in specific areas of operation underground shall not exceed a specified maximum duration,
- c) occupational health services shall be established and what its duties shall be,
- d) employing persons to do work under ground or at the surface shall only be permitted if they have a certificate from a doctor familiar with working conditions in mines, and in which scope and at what intervals check-up examinations shall be conducted for these persons and when changes in the employee activities are to be made, and that certain forms shall be used for recording the examination results and for certificates,
- e) the entrepreneur in whose company the person is to be employed or is employed shall bear the expenses for medical examinations as stipulated in letter d, to the extent that they are not paid by insurance companies.

5. which measures responsible persons shall take to fulfill the obligations arising under Section 61, in particular

- a) which precautionary measures and monitoring activities shall be carried out with a view to managing work processes in accordance with approved operating plans,
- b) that the employees shall be instructed prior to commencing employment regarding the accident and health hazards to which they will be exposed during employment, and about protection facilities and measures for avoiding these risks and at what intervals these instructions shall be repeated,

6. that safety services shall be established and which other precautionary measures and monitoring activities shall be carried out to protect employees and third parties in the mine, and how these persons shall conduct themselves in the mine to avoid danger,

7. which precautionary measures shall be taken during and after closure of a mine to prevent risk of death or injury to third parties,

8. which precautionary and implementation measures shall be taken to restore usability of the surface during and after exploration, extraction and treatment, and what requirements must be met by these measures,

9. what specialized technical and legal knowledge (professional knowledge) shall be required of specific responsible persons according to the type of functions and powers assigned to them, taking into consideration the current state of the art, and what proof of

such shall be presented and how the competent authority shall verify that these persons possess the required professional knowledge,

10. that

a) responsibility for fulfilling specific duties may also be assigned to persons other than those specified in Section 58 (1),

b) only those persons may be entrusted with execution of dangerous work or with activities carrying special responsibility

who fulfill the personal and technical requirements set out in the mining ordinance, what verification shall be presented and in what manner the competent authority shall verify that these persons possess sufficient technical knowledge,

11. under what conditions and in what manner the knowledge gained from notifications pursuant to Section 74 may be published by authorities specified in the mining ordinance, in the interest of improvement safety and prevention of accidents, with the exception of personal and professional information.

The provision on safety zones (sentence 1 no. 3) shall not affect Section 27 of the Federal Waterway Act (WaStrG) of 2 April 1968 (Federal Law Gazette II. p. 173), last amended by Article 5 of the Act of 10 May 1978 (Federal Law Gazette I, p. 613) and Section 9 of the Act on the Tasks of the Federation in the Area of Maritime Shipping (SeeAufgG) of 24 May 1965 (Federal Law Gazette II p. 833) as published on 30 June 1977 (Federal Law Gazette I p. 1314), as amended by Article 1 of the Act of 10 May 1978 (Federal Law Gazette I p. 613). Ordinances (mining ordinances) may be also issued pursuant to sentence 1 if necessary to enforce acts of the Council or Commission of the European Communities or decisions of international organizations or intergovernmental agreements relating to the subject of this Act; such ordinances may also be used to assign obligations to persons other than the entrepreneurs and employees. Ordinances to implement legislation within the meaning of sentence 3 (mining ordinances) can also stipulate:

1. the type and scope of financial provision for liabilities which can arise due to mining activities, and requirements for the documentation of financial provision, and

2. the type and scope of the technical and financial capacities needed to implement measures to avoid damage, to limit damage, to undertake emergency responses and to rehabilitate, and requirements for the documentation of technical and financial provision.

## **Section 67**

### **Technical and statistical documents, mine surveying**

If required to carry out mining supervision or enforce provisions on granting and maintaining mining licences and to protect the legal interests specified in Section 11 nos. 8 and 9 or Section 66 or in the case of no. 7 to regulate the stipulation of affected areas, ordinances (mining ordinances) may be issued to stipulate

1. that specific mine maps and other drawings related to activities as provided for in Section 2 (1) nos. 1 and 2 and to facilities as provided for in Section 2 (1) no. 3 shall be submitted and updated, that specific lists, logs and statistics regarding employees and operational processes are to be kept and submitted, notifications are to be made and accompanied by specific documentation,

2. under which conditions a person may be accredited as provided for in Section 64 (1) sentence 2,

3. requirements for the business operations of mine surveyors, including technical equipment,

4. which requirements the mine surveying and other surveying activities shall fulfill,
5. which drawings, maps, plans and documents shall comprise the mine plans and at which intervals they shall be updated,
6. for what type of operations and under what conditions the entrepreneur is obligated to prepare mine plans,
7. how to determine the area of the surface that might be affected by a mining operation or other activities pursuant to Sections 126 to 129 (affected area),
8. that the documents, drawings, lists, logs and statistics shall be stored and for how long.

### **Section 68**

#### **Issuing mining ordinances**

- (1) The Land governments shall issue mining ordinances based on Sections 65 to 67, unless otherwise provided for in (2). These governments may transfer this authorization to other authorities by ordinance.
- (2) The Federal Ministry for Economic Affairs and Energy shall issue mining ordinances
  1. to the extent that they are based on Section 65 sentence 1 nos. 3, 6 and 5 in connection with no. 3, on Section 65 sentence 2, on Section 66 sentence 1 no. 4 letters a, b, d and e and on Section 67,
  2. to the extent that they involve activities as provided for in Section 2 in the area of the continental shelf, and
  3. to the extent that protection of the legal interests specified in Sections 65 to 67 under similar circumstances are not similarly ensured by mining ordinances pursuant to (1), or to the extent that acts of the Council or Commission of the European Communities or decisions of international organizations or intergovernmental agreements relating to the subject of this Act are enforced.
- (3) Mining ordinances pursuant to (2) shall be issued with the consent of the Bundesrat and
  1. mining ordinances based on Sections 65 and 66 sentence 1 nos. 1, 2, 4 to 7, 9 and 10 and sentence 3 with the consent of the Federal Ministry of Labour and Social Affairs, to the extent that they relate to labour protection,
  2. mining ordinances based on Section 66 sentence 1 no. 1 letter a and no. 8 with the consent of the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety and the Federal Ministry for Transport and Digital Infrastructure,
  3. mining ordinances based on Section 66 sentence 1 no. 3, as well as all other mining ordinances, if they involve activities as provided for in Section 2 (1) in the area of the continental shelf and coastal waters, with the consent of the Federal Ministry of Transport and Digital Infrastructure.
- (4) The mining ordinances may make reference to notifications made by experts regarding the area of discovery, if required for technical reasons.

### **Part V**

#### **Mining Supervision**

### **Section 69**

#### **Basic supervision**

- (1) Mining shall be subject to supervision by the competent authority (mining supervision).
- (1a) In the case of projects pursuant to Section 52 subsection 2a sentence 1, the competent authority must undertake suitable monitoring as part of its supervision pursuant to subsection 1 to ensure in particular that the project is being carried out in compliance with the



environment-related stipulations of the planning approval decision and the necessary main operating plan, special operating plan or closure plan approvals and the related supplementary stipulations; this shall particularly apply to stipulations on environment-related features of the project, the site of the project, to measures which are intended to prevent, alleviate or offset substantial detrimental environmental impacts, and for compensatory measures in the case of intervention in nature and the landscape. Here, use shall be made of existing monitoring mechanisms and results of the monitoring measures to be undertaken by the entrepreneur pursuant to Section 52 subsection 2d.

(2) Mining supervision shall end after execution of the closure plan (Section 53) or corresponding order of the competent authority (Section 71 (3)) at the time when, according to general experience, it is no longer probable that the operation would pose a danger of death or injury of third parties, or danger to other mining operations and deposits whose protection is in the public interest, or a hazard to the public.

(3) The mine surveyors and their work as provided for in Section 64 (1) shall be subject to the supervision of the competent authority.

### **Section 70**

#### **General powers of supervision, obligations of disclosure and toleration**

(1) Any party holding an exploration or extraction licence for freely mineable or freehold resources, any responsible persons as specified in Section 64 (1) and persons belonging to the occupational medicine services or safety services, as well as the persons stipulated in Section 66 sentence 1 no. 10 (persons obligated to disclose information) shall disclose any information and supply any documents required by the authority responsible for mining supervision.

(2) The persons assigned by the competent authority to supervise (assigned persons) shall have the authority to enter real property on which operations take place, offices and facilities belonging to the party obligated to disclose information, as well as to enter marine craft used for or intended for maintenance or operation of facilities in the area of the continental shelf, to conduct tests there, to tour the mine and to take documented samples at the cost of the entrepreneur, as well as to view the commercial and operational documents of the person obligated to disclose information. To prevent imminent danger to public safety and order, the specified pieces of land and spaces may also be entered outside of usual business and operation hours, even if this space also serves as living space; the basic right of the inviolability of the home (Article 13 of the Basic Law for the Federal Republic of Germany) shall be restricted accordingly. The assigned persons are obligated, unless the entrepreneur does not expressly waive the obligation, to leave a part of the sample officially closed or sealed with the company; they are authorized to temporarily seize objects, if necessary for evaluating the causes of accidents or if it can be expected that this will lead to new insights on accident prevention. The persons obligated to disclose information shall tolerate the measures stipulated in sentences 1 and 2. These persons are obligated to accompany the assigned persons on tours of the mine.

(3) The party obligated to disclose information may refuse to answer questions if these answers would directly expose it or a family member as specified in Section 383 (1) nos. 1 to 3 of the Code of Civil Procedure to the risk of criminal prosecution or proceedings pursuant to the Administrative Offences Act (OWiG).

(4) The provisions of (1) to (3) shall also apply to persons for whom there is reason to believe that they are carrying out or have carried out one of the activities specified in Section 2 (1) no. 1 without the necessary authorization.

### **Section 71**

#### **Basic authority to issue orders**

(1) In individual cases the competent authority may issue orders as to which measures shall be taken to enforce the provisions of this Act, the ordinances based on this Act and the ordinances maintained pursuant to Section 176 (3). Orders may go beyond orders based on

a ordinance or on an approved operating plan only if this is required for protection of human life, health or equipment and materials of employees or third parties.

(2) If circumstances contravening this Act, any ordinance based on this Act, any approved operating plan, any supplementary provision of the approval, any subsequent requirement or any order as provided for in (1), lead to direct risk to employees or third parties, the competent authority may issue an order that the mine be partially or completely closed until proper conditions can be restored, if the risk cannot be otherwise averted or closure is essential for investigating the cause of the risk. Section 51 (1) shall not apply.

(3) If closure is ordered for operations that do not have an approved operating plan, the competent authority may order that appropriate measures be carried out to ensure fulfillment of the conditions stipulated in Section 55 (2).

### **Section 72**

#### **Preventing unauthorized activities, seizure**

(1) If exploration or extraction of freely mineable resources is carried out without the required licence or if operations are carried out without approved operating plans as required by Section 51, or without permission, general approval or tests required by provisions of ordinances based on this Act or maintained provisions, the competent authority may prohibit continuation of activities. If operations are prohibited in the area of the continental shelf and coastal waters, the competent authority shall order removal of the facilities serving to carry out activities.

(2) The competent authority may seize explosive and blasting materials, detonating agents, blasting accessories and any other objects, if these objects are not approved for the mining operations subject to supervision or if necessary for preventing unauthorized use. The proceeds from sale shall compensate for the seized objects.

### **Section 73**

#### **Prohibition of employment of responsible persons**

(1) The competent authority may prohibit the entrepreneur from employing any of the responsible persons specified in Section 58 (1) no. 2 in its area of responsibility if

1. this person has violated obligations, either intentionally or with gross negligence, for which it bears responsibility, and this behavior continues, despite warnings from the competent authority, or there is otherwise reason to believe that the person is not sufficiently reliable,

2. there is reason to believe that the person does not possess the required professional knowledge or physical capability.

If the entrepreneur does not obey an order as stipulated in sentence 1, the competent authority may prohibit continuation of mining operations until the order has been obeyed.

(2) If there is reason to believe that the entrepreneur does not possess the necessary reliability or professional knowledge to ensure safety and order in the mine, the competent authority may prohibit continuation of mining operations until a responsible person has been appointed to assume overall management and, if the entrepreneur does not comply with the prohibition, the authority may stop operations. This shall apply accordingly to mines operated by legal persons or partnerships if the requirements of sentence 1 are fulfilled by a person authorized to represent them by statute, by-laws or articles of association.

### **Section 74**

#### **Assistance, notification requirement**

(1) In case of mining events that have led to, or could lead to, a risk to employees or third parties, the competent authority may order that any measures necessary be taken to avert danger or rescue injured or endangered persons.

(2) The entrepreneur and, if requested by the competent authority, the entrepreneurs of other mining operations shall make available without delay the manpower, equipment and resources required for executing the measures specified in (1). Any expenses incurred by

the entrepreneurs of other mining operations shall be borne by the entrepreneur in whose mine the manpower, equipment and resources were deployed.

(3) The entrepreneur shall notify the competent authority without delay of

1. any mining events that result in or could result in death or serious injury to one or more persons, and
2. any mining events that are particularly important for learning about prevention or removal of risk to human life or health of employees or third parties, or are of particular importance for operations.

## **Part VI**

### **Mining Authorization Book, Mining Authorization Map**

#### **Section 75**

##### **Filing and updating the mining authorization book and the mining authorization map**

(1) A mining authorization book and a mining authorization map shall be filed with the competent authority and updated.

(2) The following items shall be registered in the mining authorization book:

1. any exploration licences, extraction licences, mining proprietorships and mining licences maintained pursuant to Section 149,
2. any changes in the mining licences specified in no.1 by means of consolidation, partition, exchange or combination.

(3) The following items shall be entered in the mining authorization map:

1. the fields to which the mining licences specified in (2) no. 1 refer,
2. changes to the fields arising from changes specified in (2) no. 2,
3. land use restriction areas.

(4) The entries in the mining authorization book and the mining authorization map shall be made ex officio.

(5) Expired mining licences shall be deleted from the mining authorization book. This expiry shall be suitably marked in the mining authorization map.

#### **Section 76**

##### **Viewing rights**

(1) Any person proving legitimate interest shall be allowed to view the mining authorization book, the mining authorization map and any deeds referred to in the entries. This shall exclude deeds containing business or trade secrets.

(2) To the extent that viewing is allowed, copies may be ordered and shall be certified, if requested.

(3) The competent authority shall, on application and without the presentation of a justified interest, grant access to the following information about the mining licences cited in Section 75 subsection 2 number 1:

1. owner,
2. fields to which the mining licence refers,
3. date of application and date of issue,
4. duration and
5. mineral to which the mining licence refers.

Section 3 subsection 2 of the Environmental Information Act shall be applied mutatis mutandis. The competent authority can make the information cited in sentence 1 available

for public viewing. The viewing of further information pursuant to subsection 1, the request for excerpts pursuant to subsection 2 and the granting of access or the publication of information on the basis of consent by the relevant entrepreneur or on the basis of other provisions shall not be affected.

**Part VII**  
**Mining and Land Ownership, Public Transportation Facilities**

**Chapter 1**  
**Assignment of real property**

**Subchapter 1**  
**Admissibility and conditions for real property assignment**

**Section 77**  
**Purpose of real property assignment**

- (1) The entrepreneur may file an application for assignment of real property in accordance with the provisions of this chapter, if use of the piece of land is necessary for erecting or operating an extraction operation or treatment operation, including the accompanying activities and facilities specified in Section 2 (1) nos. 1 to 3.
- (2) This use is deemed especially necessary if the project is based on proper technical and commercial operational planning or management and it is not possible to make parcels of land belonging to the entrepreneur available for this purpose, or it is not reasonable because use of this land is necessary for other purposes of the type specified in (1).
- (3) Provisions on expropriation for purposes other than those specified in (1) shall remain unaffected.

**Section 78**  
**Subject of real property assignment**

By means of real property assignment

1. property rights including the authorization, possession and rights in rem in pieces of land arising from Section 34,
2. personal rights enabling individuals to acquire, possess or use pieces of land, or restricting their use,

may be withdrawn, assigned, changed, encumbered with rights in rem or otherwise restricted.

**Section 79**  
**Requirements for admissibility of real property assignment**

- (1) Real property assignment is admissible in individual cases if it serves the common good, in particular if it ensures a supply of raw materials to the market, ensures mining jobs, maintains or improves the economic structure or practical and systematic extraction of deposits, and the purpose of real property assignment can not be achieved in any other reasonable way, with a view to the locational constraints of the extraction operation.
- (2) Real property assignment requires that the beneficiary of the assignment

1. has made earnest but unsuccessful efforts
  - a) to freely acquire the piece of land under reasonable conditions, and in particular, as far as possible and reasonable, by offering other suitable pieces of land from the beneficiary's own assets, or
  - b) to reach an agreement on land use sufficient for executing the project under reasonable conditions

and

2. has proven that the piece of land will be used for the intended purpose within a reasonable period of time.

(3) Furthermore, the assignment of a piece of land that is developed or that is directly connected spatially with a piece of land that is developed and is enclosed shall require the consent of the authority responsible under Länder law. Consent may only be granted for reasons of overriding public interest and in view of the locational constraints of the project.

### **Section 80 Assignees and assignors**

(1) The assignee of real property shall mean the entrepreneur for whose project an assignment procedure is being executed.

(2) The assignor shall mean the owner of the piece of land or other objects that are the object of assignment and the holder of rights that are to be withdrawn, assigned, changed, encumbered or otherwise restricted.

(3) Secondarily entitled parties are the persons entitled to rights in rem or personal rights in or in reference to the object of assignment.

### **Section 81 Scope of assignment of real property**

(1) Real property assignment shall only be executed in the scope required for realizing the purpose of assignment. The deadline for realizing the purpose of assignment shall be set by the competent authority.

(2) Expropriation shall be admissible only if

1. the pieces of land are developed or directly connected spatially with pieces of land that are developed and enclosed,

2. it is expected at the time of assignment that the pieces of land will appreciate in value due to officially ordered measures for restoring usability, or

3. the owner requests expropriation pursuant to Section 82.

If encumbering pieces of land with an easement is sufficient in the cases specified in sentence 1 no. 1 for realizing the purpose of assignment, the assignment shall be restricted to this easement. In the cases specified in sentence 1 no. 2, expropriation shall not be admissible if the owner agrees to compensate in money the appreciation in value resulting from measures taken to restore usability of the surface after termination of use of the land.

(3) If expropriation of a piece of land or an item specified in Section 82 (5) is not the object of assignment, after termination of use of the assigned items for the intended purpose, or, if the a piece of land is subsequently reserved for a purpose that would justify assignment, after termination of use for this purpose, the assignee shall

1. restore the piece of land or the items to their condition at the time assignment became effective, unless restoring usability entails unreasonable expense or the competent authority has issued an order regarding restoration of the surface that deviates from the prior condition, and

2. make the assigned object available again to the assignor.

### **Section 82 Expanding the scope of real property assignment**

(1) In the cases specified in Section 81 (2) sentence 1 no. 1, the owner may request expropriation instead of a different form of assignment of real property that was applied for.

(2) Furthermore, the owner may request expropriation of a piece of land if a different form of real property assignment is inequitable for him.

(3) If a piece of land or spatially or economically adjoining real property is only the partial object of real property assignment, the owner may request that the real property assignment

be extended to include the remaining piece of land or the remaining real property, if the remaining piece of land or the remaining real property can no longer be used in the scope required for construction or commercial purposes.

(4) If the profitability of a piece of land is severely impaired by expropriation of, or encumbrance or restriction of property rights in another piece of land, the owner may request that the real property assignment be extended to include the other piece of land. The provisions of (1) and (2) shall apply mutatis mutandis.

(5) The owner, the beneficial owner or the tenant may request that the real property assignment be extended to the appurtenances of a piece of land, as well as to objects as provided for in Section 95 of the German Civil Code, if as a result of the real property assignment they can no longer commercially utilize the appurtenances or the objects or otherwise appropriately exploit them.

### **Section 83**

#### **Applying provisions mutatis mutandis**

(1) Unless otherwise provided for,

1. the provisions of this chapter applicable to pieces of land shall also apply mutatis mutandis for portions of pieces of land, and

2. the provisions of this chapter applicable to ownership in pieces of land shall also apply mutatis mutandis to rights equivalent to real property with the exception of mining proprietorships and independent mining rights.

(2) Unless otherwise provided for, the provisions of this chapter applicable to expropriation, assignment, change, encumbrance or other restrictions of other rights specified in Section 78 nos. 1 and 2 shall apply mutatis mutandis.

### **Subchapter 2**

#### **Compensation**

### **Section 84**

#### **Principles of compensation**

(1) Compensation shall be paid for real property assignment.

(2) Compensation shall be paid for

1. the loss of legal rights due to the real property assignment, and

2. other economic loss due to the real property assignment.

(3) Compensation may be requested only by a party whose rights are impaired by the real property assignment and therefore suffers economic loss (compensation beneficiary). The beneficiary of the real property assignment is obligated to pay compensation (compensation obligor).

(4) Compensation shall be assessed in money. It shall be rendered in one payment, unless otherwise provided for in Section 89. One-off compensation amounts shall bear interest at the annual rate of two percentage points more than the base rate pursuant to Section 247 of the German Civil Code, starting at the point in time when the competent authority makes a decision on the application for real property assignment. In the case of premature possession, the point in time that this becomes effective shall be decisive. Sentences 1 to 4 shall not apply if the compensation beneficiary and the compensation obligor agree on a different type of compensation.

(5) In calculating the amount of compensation, the condition of the object of real property assignment at the point in time in which the competent authority makes a decision on the application for real property assignment shall be decisive. In cases of premature possession, the condition at the point in time that this becomes effective shall be decisive.

### **Section 85**

#### **Compensation for loss of legal rights**

- (1) Compensation for loss of legal rights shall be calculated on the basis of the fair market value of the object of real property assignment.
- (2) The fair market value shall be determined according to the price that could be attained on the date used as a reference for calculations, at usual market conditions according to the legal circumstances and actual characteristics, the quality and location of the object of valuation, without taking unusual or personal circumstances into consideration.
- (3) Regulations based on Section 199 (1) of the Building Code shall apply mutatis mutandis.

### **Section 86**

#### **Compensation for other economic losses, contributory negligence**

- (1) Other economic losses incurred as a result of the real property assignment shall be compensated only if these economic losses were not factored into the calculation of compensation for loss of legal rights.
- (2) Economic loss as provided for in (1) shall include in particular
  1. the temporary or permanent loss suffered by the compensation beneficiary in his professional activities, economic activities or in fulfilling tasks assigned to him in accordance with the foregoing, however not to exceed the expenditures required for using another object in the same manner as the object to be assigned,
  2. the decline in value of part of another piece of land or part of spatially or economically adjoining real property due to assignment of a part, or decline in value of another piece of land due to assignment of rights in a piece of land, if the decline in value was not already factored into the calculation of compensation pursuant to no. 1,
  3. any expenses for relocation made necessary by the real property assignment.
- (3) If the economic losses are due to contributory negligence on the part of the compensation beneficiary, Section 254 of the German Civil Code shall apply mutatis mutandis.

### **Section 87**

#### **Rights of secondarily entitled parties**

- (1) Any rights in the piece of land to be assigned as well as personal rights entitling the party to possession or use of the piece of land or restricting use of the piece of land may be maintained to the extent that this is consistent with the purpose of real property assignment.
- (2) To the extent that rights are not maintained, special compensation shall be paid to
  1. parties holding hereditary building rights, life estate rights, easements and rights to acquire the piece of land,
  2. holders of personal rights that entitle them to possession, or to use the piece of land if they are in possession of it,
  3. holders of personal rights that entitle them to acquire the piece of land or restrict use of the piece of land by the compensation obligor.
- (3) Holders of rights that are not maintained and who do not receive special compensation are entitled to a portion of the compensation for ownership rights in the piece of land that is equivalent to the value of their rights, if their rights include this property. This shall apply accordingly for compensation determined for the loss of legal rights incurred by the real property assignment in other cases or for a decline in the value of the remaining property as defined in Section 86 (2) no. 2.

### **Section 88**

#### **Transfer of liability after expropriation**

If a piece of land is expropriated, and if the assignor is personally liable for a mortgage that has been retained, the assignee shall assume the liability of the assignor up to the amount of the mortgage, not however to exceed the fair market value of the piece of land.

#### **Section 89** **Amount of compensation**

- (1) If real property assignment creates a right of use or imposes constraints on the owner or other parties enjoying the right of use as a result of continued loss of use or any other constantly occurring impairment of use, compensation shall be rendered in periodic payments. If this does not settle the economic losses to be compensated, the compensation amount shall be rendered in a single payment.
- (2) If a compensation beneficiary incurs economic losses as a result of the real property assignment that are not foreseeable at the time of the decision on real property assignment, the compensation beneficiary may request that additional compensation be determined. This request shall be admissible only if the compensation beneficiary proves that it has made earnest efforts to reach a consensus on the additional compensation. The additional compensation shall be determined only for the period following the filing of the request.
- (3) If compensation as provided for in (1) sentence 1 shall be rendered in periodic payments and if there is any substantial change in circumstances that were decisive in calculating the amount of payments, the compensation beneficiary or the compensation obligor may request that the amount of the periodic payments be determined anew; (2) sentences 2 and 3 shall apply *mutatis mutandis*.
- (4) If economic losses cannot be projected at the time of the decision on real property assignment, the compensation beneficiary may request the competent authority to obligate the compensation obligor to provide security. The competent authority shall make decisions regarding release of security.

#### **Section 90** **Changes in value, changes, creation of new legal status**

- (1) The following changes in value shall not be factored in when determining the amount of compensation:
  1. appreciation in value occurring exclusively as a result of extraction or treatment operations benefitting from the real property assignment,
  2. changes in value occurring in anticipation of the real property assignment,
  3. appreciation in value occurring after the point in time in which the owner or other holders of rights could have accepted a purchase offer or exchange offer as provided for in Section 79 (2) no. 1 letter a or an offer to reach an agreement as provided for in Section 79 (2) no. 1 letter b at reasonable terms in order to avoid the real property assignment, unless this party has invested capital or labor in the appreciation in value,
  4. changes increasing the value that were carried out without the requisite official order, permission, approval, consent, exploration licence or extraction licence, unless these changes served exclusively to maintain proper management.
- (2) For physical structures subject to provisions of public law allowing for their dismantling at any time without compensation, compensation shall only be provided for on grounds of equity. If a request to have the physical structures dismantled is possible only after expiration of a period, compensation shall be calculated in the proportion of the remaining period to the entire period.
- (3) If third-party rights that are maintained or separately compensated diminish the value of ownership in the piece of land to be assigned, this shall be factored into calculations of compensation of ownership in the piece of land.
- (4) Any agreement concluded in view of real property assignment proceedings in the planning phase or after commencement of proceedings, and that grants a third party the



right to use the object of the real property assignment, shall not be factored in to the calculation of the compensation if the agreement perceptibly deviates from typical agreements in comparable cases not involving real property assignment, and if there is reason to believe that the agreement was concluded in order to collect compensation.

(5) If any changes made to the object of assignment after commencement of assignment proceedings and without the consent of the competent authority are disadvantageous to the intended purpose, and if the assignor of the real property who made the changes was aware of this circumstance, the competent authority may order that the previous state of the real property be restored at the request of the assignee.

### **Subchapter 3**

#### **Preliminary ruling, execution and reversal of the real property assignment**

##### **Section 91**

###### **Preliminary ruling**

At the request of the assignee of real property, the assignor or a secondarily entitled party, the competent authority shall issue a preliminary ruling on the legal changes to be effected by the real property assignment. In this case the competent authority shall issue an order requesting an advance payment to the compensation beneficiary in the amount of the expected compensation. Section 84 (4) sentences 2 and 3 and Section 89 shall apply mutatis mutandis.

##### **Section 92**

###### **Execution of assignment of real property**

(1) Execution of assignment of real property shall be admissible only if the decision on the request as provided for in Section 77 has become final and binding and

1. if compensation is to be rendered in one payment, the assignee has paid compensation or has deposited it in escrow in accordance with legal provisions while waiving the right to withdraw it,
2. if compensation is to be rendered in periodical payments, the assignee has paid the first installment or has deposited it in escrow in accordance with legal provisions while waiving the right to withdraw this money, and has provided sufficient security for an additional three installments.

Sentence 1 shall apply mutatis mutandis if the decision pursuant to Section 91 has become final and binding; upon request of the compensation beneficiary the competent authority may make execution of the real property assignment contingent upon additional security in a reasonable amount to be provided by the assignee. Consensus between the parties to the assignment shall be equivalent to a final and binding decision on a request as provided for in Section 77 if the agreement has been recorded and certified by the competent authority. Commencing on the day to be determined by the competent authority, the previous legal situation shall be replaced by the legal situation stipulated in the decision on real property assignment.

(2) If the decision on real property assignment is contested by one or more compensation beneficiaries regarding the amount of compensation only, the competent authority may order the early execution of the real property assignment upon request of the assignee if this party has provided security determined necessary by the authority for securing claims of the contesters, and if all other conditions as provided for in (1) have been fulfilled. The competent authority shall make decisions regarding release of security.

(3) If execution of real property assignment is admissible, the competent authority shall transmit to the land registry office a certified copy of the decision on the request as provided for in Section 77, of the decision as provided for in Section 91, or of the record provided for in (1) sentence 3, and shall request the land registry office to enter the legal changes in the land registry. Along with the request to enter the changes, the competent authority shall send a certified copy of the determination of the effective date pursuant to (1) sentence 4, and in

cases described in (2), also a certified copy of the order for early execution of the real property assignment.

### **Section 93**

#### **Escrow**

(1) Compensation payments used for satisfying claims asserted by compensation beneficiaries pursuant to Section 87 (3) shall be paid into an escrow account and the right to withdrawal waived, if several parties have a claim to such payments and there is no proof of any consensus on payout. The escrow account shall be set up with the local court having jurisdiction for the piece of land involved in the real property assignment; Section 2 of the Act on Compulsory Sale by Public Auction and Compulsory Administration (ZVG) shall apply mutatis mutandis.

(2) Any other provisions requiring or allowing for escrow accounts shall remain unaffected.

### **Section 94**

#### **Claiming rights to escrow, distribution proceedings**

(1) After the new legal situation has become effective (Section 92 (1) sentence 4), each party concerned may assert its claims to the escrow amount against any other concerned party opposing these rights, before the courts of general jurisdiction, or petition the court to institute judicial distribution proceedings.

(2) The local court specified in Section 93 (1) sentence 2 shall have jurisdiction for distribution proceedings.

(3) If early execution has been ordered, the distribution proceedings shall not be admissible until the decision on real property assignment has become final and binding.

(4) The provisions of the Act on Compulsory Sale by Public Auction and Compulsory Administration shall apply mutatis mutandis to distribution of the proceeds of any compulsory sale by public auction, with the following deviations:

1. The distribution proceedings shall be opened by court order.

2. Service of the adjudication order on the petitioner shall be deemed seizure as provided for in Section 13 of the Act on Compulsory Sale by Public Auction and Compulsory Administration; if the piece of land has already been seized in a public auction or compulsory administration, that shall be the end of the matter.

3. When opening proceedings, the distribution court shall request ex officio the land registry office to issue the notifications specified in Section 19 (2) of the Act on Compulsory Sale by Public Auction and Compulsory Administration; the entries current at the time of service of the assignment decision on the assignor of the real property, as well as any changes and cancellations entered thereafter shall be included in the certified copy of the land registry page.

4. The proceedings shall take into account the compensation beneficiaries specified in Section 87 (3) in accordance with the provisions of Section 10 of the Act on Compulsory Sale by Public Auction and Compulsory Administration; however regarding claims to periodical supplementary payments, only for the period up to payment into the escrow account.

(5) If provisions of Land law stipulate that the distribution of proceeds of a public auction shall be effected not by a court of enforcement but by a different authority, Land law may stipulate that this other authority shall also be responsible for the distribution proceedings as provided for in (1) to (4). If there is a request to change the decision issued by this other authority, a decision shall be requested of the court of enforcement. Any complaints shall be lodged against the decision of the court of enforcement.

### **Section 95**

#### **Deadline for use**

- (1) The deadline for fulfilling the purpose for real property assignment pursuant to Section 81 (1) sentence 2 shall commence when the legal change becomes effective.
- (2) The competent authority may extend this deadline before it expires, if
1. the assignee of real property can prove that it cannot fulfill the purpose for real property assignment within the deadline for no reason of its own, or
  2. universal succession occurs prior to expiry of the deadline and the legal successor can prove that it cannot fulfill the purpose for real property assignment within the deadline.
- The former assignor of the real property shall be consulted before a decision is made.

#### **Section 96 Revocation of assignment of real property**

- (1) If requested by the former assignor of the real property, the competent authority shall annul the legal changes arising from the decision on real property assignment with effect for the future, if
1. the assignee or its legal successor
    - a) has not used the piece of land for the purpose of the real property assignment by the time the deadline expires (Section 81 (1) sentence 2, Section 95), or
    - b) has abandoned the purpose of real property assignment before the deadline expires, or
  2. the compensation obligor has defaulted on two periodic compensation payments in a row.

Sentence 1 no. 1 letter b shall apply only if the piece of land was expropriated as a result of the real property assignment.

- (2) In cases specified in (1) sentence 1 no. 1, revocation shall not be admissible if the piece of land serves a purpose that would justify real property assignment.
- (3) Revocation can only be applied for within two years of the date on which the claim has arisen. The deadline shall be suspended as long as the party entitled to apply for revocation is hindered in asserting its claim by force majeure. In cases specified in (1) sentence 1 no. 1, the application shall no longer be admissible if use for the intended purpose has begun.
- (4) If the application for revocation of the real property assignment is granted, any compensation paid shall be reimbursed to the party affected by the revocation, less the amount that would correspond to compensation in accordance with the provisions of Sections 84 to 90 for the period between the effective date of the real property assignment and the revocation. Section 81 (3) no. 1 shall apply mutatis mutandis to restitution in rem of the objects affected by the revocation of real property assignment.
- (5) Subsections (1) to (4) shall apply mutatis mutandis to any legal changes effected by a preliminary ruling.
- (6) Section 92 (3) shall apply mutatis mutandis.

#### **Subchapter 4 Premature possession**

##### **Section 97 Requirements**

If the immediate execution of the project requiring real property assignment is urgent for reasons of the common good as specified in Section 79, the competent authority may turn over possession of the piece of land involved to the assignee prior to conclusion of assignment proceedings. A condition of premature possession is that the owner has been given the opportunity to make a statement, as well as any another party affected by the premature possession.

### **Section 98**

#### **Compensation for premature possession**

(1) The assignee of real property shall compensate in money any economic losses suffered as a result of the premature possession, if the losses are not settled by interest income from the compensation in money (Section 84 (4)). The type and amount of compensation shall be determined by applying Sections 84 to 90 *mutatis mutandis*.

(2) Compensation for premature possession shall be due on the day on which the premature possession becomes effective, without regard to any appeals filed.

### **Section 99**

#### **Assessment of condition of the piece of land**

At the request of the assignee of the real property, the occupier or the owner, the competent authority shall assess the condition of the piece of land prior to possession, if this is important for compensation of premature possession or assignment. The condition of the piece of land may also be assessed *ex officio*.

### **Section 100**

#### **Effective date and legal consequences of premature possession, provision of security**

(1) Possession shall become effective on the date specified by the competent authority. At this time possession shall be withdrawn from the owner of the piece of land and, if another party is in direct possession of it, also from this party, and the assignee of the real property shall become the occupier. The assignee of the real property may use the piece of land for the project specified in the application for real property assignment and may take any necessary measures. The right to use the land shall be prohibited by the right of possession if the use is not compatible with the purpose of gaining possession.

(2) Premature possession may be made contingent on provision of security in the amount of the projected compensation pursuant to Section 98 and on other conditions. At the request of a party holding rights to possession or to use of the piece of land, possession shall be made contingent upon provision of security in the projected amount of the compensation to be paid to this party.

### **Section 101**

#### **Revocation and alteration of the decision on premature possession**

(1) Premature possession shall be revoked if

1. conditions for premature possession pursuant to Section 97 are no longer fulfilled,
2. the application as provided for in Section 77 has been withdrawn, or
3. the decision on real property assignment has not been issued within a period of two years after possession became effective.

(2) In cases specified in (1) no. 1, the decision on premature possession may be altered instead of possession being revoked. The deadline determined in (1) no. 3 may be extended by the competent authority by another year at the most, if the decision on the application as provided for in Section 77 can not be made before this deadline for special reasons attributable to the proceedings.

(3) On the date on which the decision on revocation of the premature possession becomes final and binding, possession shall be withdrawn from the assignee and the previous occupier shall regain possession.

### **Section 102**

#### **Compensation for revocation or change in premature possession**

(1) If the premature possession is revoked or the decision on possession changed, the assignee of the real property shall pay compensation in money

1. in case of revocation, for economic losses incurred by the premature possession,

2. in case of change in the decision on possession, for economic losses related to the change that were not settled by the compensation for premature possession.

If requested by the parties affected by the premature possession, the assignee of the real property shall restore the land to the previous condition instead of paying compensation in money, unless restoration would entail unreasonable expense or the competent authority has ordered restoration of the surface that diverges from the previous condition.

(2) If there is no consensus, the competent authority shall upon request determine the amount of compensation and, if restoration of the previous condition is requested in accordance with provisions of the law, shall confirm its obligation to do so.

## **Subchapter 5 Costs, compulsory enforcement, proceedings**

### **Section 103 Costs**

(1) The assignee of real property shall bear the costs of the proceedings. However, to the extent that costs are incurred due to culpability or petitions serving to delay the proceedings, they may be imposed on the parties involved.

(2) In addition to the charges and expenses for the proceedings before the competent authority, costs shall also mean the expenditures incurred by the parties involved relating to the proceedings, to the extent that these expenditures were necessary for proper assertion of claims.

(3) The provisions of (1) and (2) shall apply mutatis mutandis to the proceedings as provided for in Section 96, with the stipulation that the costs under (1) sentence 1 shall be borne by the party affected by the revocation if the application for revocation is granted.

### **Section 104 Enforceable title**

(1) Compulsory enforcement according to the provisions of the German Code of Civil Procedure shall be based on

1. the record of an agreement in reference to the compensation payments specified therein,
2. a final and binding decision on real property assignment and a final and binding decision pursuant to Section 89 (2) or (3), Section 91 sentence 2 or Section 96 (4) or (5) in reference to the compensation payments stipulated therein,
3. a decision on premature possession, changes or revocation of premature possession in reference to the performance stipulated therein.

(2) The enforceable copy of the title shall be issued by the registrar of the local court with jurisdiction for the competent authority, and if the proceedings are pending before a court, by the registrar of this court. In cases specified in Sections 731, 767 to 770, 785, 786 and 791 of the Code of Civil Procedure, the local court with jurisdiction for the competent authority shall be substituted for the court that would otherwise have jurisdiction.

### **Section 105 Proceedings**

Unless otherwise provided for in this chapter, the provisions on formal administrative proceedings as stipulated in Part V Chapter 1 of the Administrative Procedure Act shall apply to assignment of real property.

### **Section 106 Notification**

(1) The competent authority shall notify the land registry of initiation of the real property assignment proceedings. The land registry shall notify the competent authority of all entries

to the land registry for the piece of land made since the date on which real property assignment proceedings were initiated and any entries made thereafter.

(2) If a court order of compulsory sale by public auction or compulsory administration has been entered in the land registry, the competent authority shall notify the execution court of initiation of the real property assignment proceedings, as well as of the decision on real property assignment, if this involves the piece of land that is the object of the enforcement proceedings.

## **Chapter 2 Land use restrictions**

### **Section 107**

#### **Establishment of land use restricted areas**

(1) If pieces of land are to be used for exploration and extraction of resources, the Land government may issue ordinances restricting land use if mining use serves the common good due to the economic importance of the resources for supplying the market with raw materials and due to the necessity of comprehensive use of the deposits; the Land government may transfer this authorization to another authority by statutory order. This restriction is not admissible if the use of the land for mining is not expected within fifteen years.

(2) Maps and plans that are an integral part of a land use restriction ordinance as provided for in (1) sentence 1 may be made public by securely storing them in an archive with a public authority, available for viewing by the general public. This shall be stated in the ordinance.

(3) The plans for land use restriction shall be announced to the public in the official publication of the highest competent Land authority prior to issuing a statutory order provided for in (1) sentence 1. The ordinance shall not be issued until three months after this announcement.

(4) If the conditions for land use restriction become partially or completely unfulfilled, the restriction shall be rescinded by statutory order or limited; Subsection (2) shall apply mutatis mutandis.

### **Section 108**

#### **Effect of establishment of land use restrictions**

(1) In areas with land use restrictions, any building permits, approvals, or any permits comprising this approval as required for erection, expansion, alterations or changes in use of physical structures shall only be granted with the consent of the competent authority pursuant to Section 69.

(2) This consent may be withheld only if the physical structure would hinder mining activities. Consent shall be deemed granted if it has not been denied within two months after receipt of the application to the authority responsible for the building permit or approval.

(3) The provisions of (1) and (2) shall not apply to physical structures serving the purpose of an agricultural or forestry enterprise only in the period prior to use of the land in question for mining.

### **Section 109 Compensation**

(1) If a substantial drop in the value of the piece of land occurs because consent is denied pursuant to Section 108 (2), the owner of the real property shall be paid adequate compensation in money. The owner of the land may furthermore demand adequate compensation in money if the denial of the building permit causes a loss in value of expenditures he made to prepare his land for use prior to the ordinance issued pursuant to Section 107 (1), in the belief he would be able to continue this use.

(2) If for economic reasons the land owner can no longer be expected to continue to hold the property or to use it in the previous manner or in any other admissible manner, he may demand that his property be taken over instead of receiving compensation pursuant to (1).

(3) The entrepreneur benefiting from the land use restriction shall pay the compensation. Sections 84 to 90 shall apply mutatis mutandis, with the stipulation that the fair market value shall be at least the value that would apply for the property without the denial of land use permit.

(4) If there is no consensus on compensation, the competent authority shall issue a decision on compensation.

(5) If even a minor drop in the value of a piece of land occurs as the result of the establishment of land use restrictions, the property owner may demand as compensation that the property be taken over. The provisions of (3) and (4) shall apply mutatis mutandis.

### **Chapter 3 Subsidence damage**

#### **Subchapter 1 Adaptation**

#### **Section 110 Obligation of adaptation**

(1) If there is any concern that extraction companies that have submitted at least a general operating plan pursuant to Section 52 (2) no. 1 could cause damage to the surface that would necessitate preventative protection with physical structures to prevent risk to human life, health or important equipment and materials, the building contractor shall consider the expected effects of mining on the ground surface when erecting, expanding or substantially altering a physical structure, if requested by the entrepreneur, by adapting the location, positioning or construction of the physical structure.

(2) An entrepreneur as provided for in (1) shall mean the entrepreneur whose extraction operations require the adaptation. If the adaptation is to be made due to damage incurred by planned or already terminated extraction operations, the entrepreneur shall be deemed the party planning extraction or the party that carried out extraction until termination of operations, and also the extraction licence holder consenting to such.

(3) If the adaptation entails insubstantial economic loss or expenditures, these shall be borne by the building contractor. Any losses and expenditures exceeding this threshold shall be borne by the entrepreneur.

(4) If requested by the contractor, the entrepreneur shall render an adequate advance payment for expenditures incurred by the contractor that the entrepreneur is required to pay pursuant to (3) sentence 2. Section 115 (2) and (3) shall apply mutatis mutandis for the obligation of more than one entrepreneur to compensate expenditures and render advance payment.

(5) The provisions of (1) shall not apply if the losses or expenditures that would be incurred for adaptation are disproportionately higher than the reduction of risk of subsidence damage resulting from the adaptation.

(6) The competent authorities shall provide the entrepreneur with information on any applications for a building permit, approval, or any permit comprising this approval concerning the area specified by the entrepreneur.

#### **Section 111 Safeguarding measures**

(1) If preventive precautionary measures pursuant to Section 111 are insufficient, physical structures shall be erected with additional construction precautions (safeguarding measures) required to prevent subsidence damage at the request of the entrepreneur. The safeguarding measures shall take into consideration the type and scope of the expected deformations of the ground and the type of construction, size, shape and the susceptibility of the physical structure to subsidence damage. Sentences 1 and 2 shall apply mutatis mutandis to an expansion or substantial alteration to physical structures.

- (2) The entrepreneur shall bear the cost of safeguarding measures. If the building contractor has only partially fulfilled its obligations under Section 110 (1) or not at all, it shall bear the portion of cost of safeguarding measures attributable to its negligence.  
(3) Section 110 (2), (4) and (5) shall apply mutatis mutandis.

### **Section 112**

#### **Loss of claim to compensation**

If physical structures are erected, expanded or substantially altered in violation of Section 110 or 111, claims to damages based on subsidence damage to these structures and the resulting injury to human life or health or things shall be inadmissible, if the damage is attributable to a violation of the aforementioned provisions. Sentence 1 shall not apply if the entrepreneur has not or has only partially fulfilled its compensation obligations or its obligation to bear costs, or to render an advance payment pursuant to Section 110 (3) and (4) or pursuant to Section 111 (2) and (3). Section 118 shall apply mutatis mutandis to violations of the building contractor or the entrepreneur not attributable to intent or gross negligence.

### **Section 113**

#### **Construction warnings**

- (1) If it is not possible to protect physical structures against subsidence damage as provided for in Section 110 or 111, or if the economic loss or expenditures for adaptation as provided for in Section 110 or for safeguarding measures as provided for in Section 111 are disproportionately higher than the actual reduction of risk of subsidence damage, the entrepreneur may issue a written warning to the building contractor prior to erection, expansion or substantial alterations of a physical structure. The warning shall contain information regarding the type of subsidence damage to the surface to be expected, any other resulting substantial impact to the physical structures and fulfillment of the conditions as set forth in sentence 1.  
(2) If physical structures are installed, expanded or substantially altered despite the warning, claims for compensation of subsidence damage due to damage to these structures and resulting damage to human life, health or things shall be inadmissible. Sentence 1 shall not apply if the requirements for issuing a warning pursuant to (1) sentence 1 were not fulfilled or if the installation, expansion or substantial alteration of conduits used for public supply or disposal is unavoidable.  
(3) If a piece of land is not developed or if the type or scope of use for construction otherwise admissible cannot be exploited due only to the warning as provided for in (1), the entrepreneur shall pay compensation for the decline in the fair market value of the piece of land. If for economic reasons the land owner can not reasonably be expected to continue to hold the property or to use it in the previous manner or in any other admissible manner due to the warning, he may demand that the property be taken over by the entrepreneur. In this case the entrepreneur shall pay compensation in the amount of the fair market value that the property would have achieved without the warning, as well as the expenditures required for acquiring replacement property. A claim under sentence 1 shall be inadmissible if there is reason to believe that declaration of intent to erect, expand or substantially alter a physical structure was made for the sole purpose of collecting compensation.

### **Subchapter 2**

#### **Liability for subsidence damage**

#### **Subsubchapter 1**

#### **General provisions**

### **Section 114**

#### **Subsidence damage**

- (1) If an activity as specified in Section 2 (1) nos. 1 and 2 or a facility as specified in Section 2 (1) no. 3 (mining operation) kills a person or injures the body or health of a person or



damages a thing (subsidence damage), compensation shall be paid for the ensuing damage pursuant to Sections 115 to 120.

(2) Subsidence damage as provided for in (1) shall not mean

1. injury to an employee of the mining operation or damage to a thing used in the mining operation,
2. damage to another mining operation or to resources subject to exploration or extraction rights of another party,
3. damage incurred that cannot be prohibited pursuant to Section 906 of the German Civil Code,
4. adverse effects occurring as a result of planning decisions made regarding the deposits or the mining operation, and
5. minor economic losses or expenditures in connection with adaptation as provided for in Section 110.

### **Section 115**

#### **Liability of the entrepreneur**

(1) The entrepreneur operating the mining operation at the time subsidence damage occurred or who paid a third party to operate the mine shall pay damages for this subsidence damage.

(2) If subsidence damage was caused by two or more mining operations, the entrepreneurs of the mining operations involved shall be liable as joint and several debtors. Unless provided for otherwise, with regard to the share of liability that each of the joint and several debtors shall bear, the obligation to pay damages and the scope of payment shall depend on the circumstances, and in particular, on the extent to which the subsidence damage was caused primarily by one or the other mining operations; in case of doubt the mining operations involved shall bear equal portions.

(3) If in cases specified in (2) the entrepreneur of one of the mining operations involved is exempt from liability toward the injured party pursuant to a contractual provision, the entrepreneurs of the other mining operations shall be released from liability for the portion of the exempted operations.

(4) If subsidence damage is caused by one and the same mining operation within one period of time in which it was operated by two or more entrepreneurs, (2) and (3) shall apply mutatis mutandis.

### **Section 116**

#### **Liability of mining permit holders**

(1) Not only is the entrepreneur obligated to pay compensation pursuant to Section 115 (1), the holder of an exploration or extraction permit (mining permit) on which the mining operation is based shall also pay compensation for subsidence damage; this shall also apply to approved operations with an operating plan if the mining permit had already expired when the damage occurred or if it has been retroactively revoked. The entrepreneur and the mining permit holder shall be jointly and severally liable. If a jointly and severally liable debtor is exempted from liability by contractual provision, the other jointly and severally liable debtor shall also be exempted from liability.

(2) Unless otherwise provided for, the entrepreneur shall bear sole responsibility among the joint and several debtors.

### **Section 117**

#### **Scope of liability, statute of limitations, third-party rights**

(1) The scope of liability shall be subject to the provisions of the German Civil Code on liability for torts, however with the following limitations:

1. In case of death or injury, the liable party shall pay an amount of up to EUR 600,000 per person or an annual pension of up to EUR 36,000.

2. In case of damage to property the liable party shall pay an amount not to exceed the amount of the fair market value of the damaged thing; this shall not apply to damage to pieces of land, its components or appurtenances.

(2) The provisions of Division 5 of Book 1 of the German Civil Code shall apply to the statute of limitations for the claim to compensation of subsidence damage.

(3) Articles 52 and 53 of the Introductory Act to the German Civil Code shall apply mutatis mutandis to compensation.

### **Section 118**

#### **Contributory negligence**

If negligence on the part of the injured party contributed to the subsidence damage, Section 254 of the German Civil Code shall apply; if physical property was damaged, the culpability of the party exercising actual control over the physical property shall be equivalent to the injured party's culpability.

### **Section 119**

#### **Contributory negligence of a third party**

If subsidence damage occurred partly due to a cause giving rise to liability of a third party based on another law, the liable party and the third party shall be joint and severally liable to the injured party. The following provisions shall apply mutatis mutandis:

1. Section 115 (2) sentence 2 to settling allocation of liability among the party liable under Section 115 and the third party, and

2. Section 115 (3) for liability to the injured party.

However, the liable party is not obligated to pay compensation exceeding the caps on liability stipulated in Section 117.

### **Section 120**

#### **Presumption of subsidence damage**

(1) If damage occurs in the area affected by underground exploration or extraction of a mining operation or in the course of a mining activity using drilling which is not intended to explore for or extract gases or geothermal heat from spaces in closed mines, due to subsidence damage, uplift, compression or strain in the surface or by fissures or by vibrations, that can be considered by its nature to be subsidence damage due to mining operations, it shall be presumed that the damage has been caused by this mining operation. This shall not apply if it is found that

1. the damage could have been caused by an apparent construction defect or by use contrary to construction legislation or

2. the subsidence, uplift, compressions, strains, fissures or vibrations could have been caused

a) by naturally occurring geological or hydrogeological events or changes in the construction site

b) or by a third party that impacted the surface in the area of the mining operation without that third party carrying out underground exploration or extraction of resources or without carrying out mining activity with the aid of drilling.

(2) Any party invoking presumption of subsidence damage because of damage to physical structures shall allow the liable party at its request to view the building permit and accompanying documents for these physical structures as well as for structures subject to periodic inspections, including inspection documentation.

**Section 121**  
**Effect regarding other provisions**

This shall not affect statutory provisions stipulating greater liability for damage as described in Section 114 than the liability under the provisions of this subsection, or stipulating that another party shall be responsible for the damage.

**Subsubchapter 2**  
**Subsidence damage insurance**

**Section 122**  
**Authorization**

(1) The Federal Ministry for Economic Affairs and Energy shall be authorized to establish by ordinance with the consent of the Bundesrat, in its area of responsibility, a public law agency with full legal capacity for insuring against subsidence damage claims (subsidence damage insurance), if

1. liability for subsidence damage is not clear if the entrepreneurs are not liable, and
2. liability does not extend to all entrepreneurs, unless compensation of damage by an entrepreneur or a certain group of entrepreneurs is ensured in the scope of contingency insurance.

(2) The subsidence damage insurance shall pay for any case of non-payment in place of the parties liable pursuant to Sections 115 and 116 for compensating the subsidence damage.

(3) Non-payment shall be deemed the inability of the injured party to claim compensation for subsidence damage from any of the parties liable pursuant to Sections 115 and 116. Non-payment shall be deemed to have occurred only if none of the parties liable pursuant to Sections 115 and 116 exist anymore or if their inability to pay has been proven by cessation of payment or any other means. If the subsidence contingency damage insurance satisfies the claims of the injured party, the party's claim against the liable party shall pass to the insurer.

(4) The Federal Ministry for Economic Affairs and Energy shall draft the articles of association of the subsidence damage insurance company containing detailed provisions by means of ordinance and without the consent of the Bundesrat.

**Section 123**  
**Ordinance on execution**

The Federal Ministry for Economic Affairs and Energy shall be authorized to issue ordinances not requiring consent of the Bundesrat regarding provisions on

1. the obligation to pay premiums, the parties obligated to pay such premiums and, to the extent necessary, premium categories, and allocating the insured parties to the various categories,
2. calculation of premiums,
3. the procedure for determining who is required to pay premiums,
4. the obligation to disclose information and to provide documents required for determining premiums, and
5. supervision of the subsidence damage insurance.

**Subchapter 3**  
**Mining and public transportation facilities**

**Section 124**  
**Public transportation facilities**

(1) The erection, expansion, substantial changes to and operation of public transportation facilities and extraction operations shall be planned and executed in mutual consideration such that extraction of resources is impaired as little as possible by public transportation facilities and public transportation facilities are disturbed as little as possible by extraction of resources. In all other cases, Sections 110 to 112 shall apply correspondingly, unless otherwise provided for in (2) and (3).

(2) Expenditures for adaptation as provided for in Section 110 and for safeguarding measures as provided for in Section 111 shall be borne by the agency funding the public transportation facilities, if the adaptation and safeguarding measures serve to avoid or reduce subsidence damage to transportation facilities resulting from extraction prior to determining an area for mining plans or publication of approved operating plans. In all other cases the entrepreneur whose extraction operation made the adaptation and safeguarding measures necessary shall bear these expenses. In a simplified planning approval procedure, the time of disclosure of plans according to sentence 1 shall be substituted by the date on which the parties concerned are given the opportunity to view the plan, and if transportation facilities are included in a development plan, by the public display of the draft of the development plan; for facilities constructed without formal planning, the commencement of construction work shall be decisive for the consent of the higher administrative authority, if formal plans are not required. Sentences 1 to 3 shall not apply to erection, expansion, substantial changes to and operation of public transportation facilities if the costs for the respective measure shall be partially or entirely borne by the owners of the property bordering on the transportation facilities.

(3) If the simultaneous operation of a public transportation facility and an extraction operation is impossible without substantial disruption to the public transportation facility, the erection, expansion, substantial changes to and operation of the public transportation facilities shall take precedence over extraction of resources, unless there is overriding public interest in extraction of resources.

(4) If erection, expansion, substantial changes to or operation of public transportation facilities requires the entrepreneur to create, remove or alter facilities of its extraction operation, the agency funding the public transportation facility shall pay him compensation in money, if these measures serve the sole purpose of protecting the transportation facility. This shall not apply if the extraction licence was not granted until after the public disclosure required for the public transportation facility; (2) sentence 3 shall apply mutatis mutandis.

#### **Subchapter 4 Monitoring the surface**

##### **Section 125 Measurements**

(1) If requested by the competent authority, the entrepreneurs involved shall at their own expense and under supervision of the authority conduct measurements to help determine the expected type and scope of impact of mining on the surface and to monitor it. The results of the measurements shall be submitted without delay to the competent authority. Section 63 (4) shall apply mutatis mutandis to making the results available for viewing.

(2) Measurements pursuant to (1) shall only be requested for the area in which mining operations have caused surface damage and impacted physical structures, or if this damage can be expected to occur, if measurements could be influential in preventing risk to human life, health or important equipment and materials.

(3) The owners and any other equitable owners shall tolerate entry to their property and installation of surveying markers if required for conducting measurements as provided for in (1). Section 39 (1) sentence 1 no. 2 and (2) no. 2 shall apply mutatis mutandis. The entrepreneurs shall pay appropriate compensation for any damage occurring as a result.

(4) The Federal Ministry for Economic Affairs and Energy shall be authorized to issue ordinances with the consent of the Bundesrat stipulating

1. which specific measurements are to be carried out in accordance with (1) and the requirements for such measurements in order to achieve the purposes specified in (1),
2. monitoring the measurements as provided for in (1),
3. the conditions to be fulfilled in accordance with (2) by the areas for which measurements may be required.

The ordinance may stipulate that Section 70 (1) to (3) be applied mutatis mutandis, and, in determining the requirements provided for in sentence 1 no. 1, reference may be made to information from experts with citations of the source.

### **Part VIII Other Activities and Facilities**

#### **Section 126 Underground storage sites**

(1) Sections 39, 40, 48, 50 to 74, 77 to 104, 106 and 131 shall apply mutatis mutandis to testing the subsoil for suitability for erecting underground storage sites and to underground storage sites. To the extent that an artificial hollow space is made or has been made to build an underground storage site, Sections 110 to 123 shall also apply mutatis mutandis to the construction and operation of underground storage sites. When submitting the first operating plan the entrepreneur shall verify that it has disclosed to the public a general description of the planned underground storage site with the most exact description possible of the location and the expected maximum expansion underground, by publishing this information in at least two of the major newspapers distributed in the vicinity of the underground storage site at least one month in advance. Any subsequent changes must also be verified if the size of the underground storage site below the ground will change substantially. Sections 39, 40, 48, 50 to 74, 77 to 104, 106 and 131 shall apply mutatis mutandis to testing the subsoil for suitability for erecting underground storage sites and to underground storage sites. When submitting the first operating plan the entrepreneur shall verify that it has disclosed to the public a general description of the planned underground storage site with the most exact description possible of the location and the expected maximum expansion underground, by publishing this information in at least two of the major newspapers distributed in the vicinity of the underground storage site at least one month in advance. Any subsequent changes must also be verified if the size of the underground storage site below the ground will change substantially .

(2) Tests of the subsoil for suitability for construction of underground storage sites shall not be conducted in connection with exploration.

(3) Regarding erection and operation of a facility for storing, securing or final disposal of radioactive material as provided for in the Atomic Energy Act as published on October 31, 1976 (Federal Law Gazette I p. 3053), and last amended by Article 14 of the Act of 28 March 1980 (Federal Law Gazette I p. 373), Sections 39, 40, 48, 50 to 74, 77 to 104 and 106 shall apply mutatis mutandis if the facility is also suitable for underground storage without containers.

#### **Section 127 Drilling**

(1) Sections 50 to 62 and 65 to 74 shall apply mutatis mutandis to drill holes and the accompanying facilities not provided for in Section 2, if the holes are not intended to exceed 100 meters in depth, with the following stipulation:

1. Commencement and termination of drilling shall be announced two weeks beforehand. If drilling work must be stopped sooner, notification shall be given without delay.

2. Section 51 (1) shall apply only if the competent authority has required an operating plan in a particular case with a view to protection of employees or third parties or to the significance of the operation.

3. Any party executing drilling for the account of third parties shall also be deemed an entrepreneur.

4. The obligation to provide information pursuant to Section 70 (1) shall also apply to the results of drilling.

5. If one entrepreneur fulfills these obligations the other entrepreneurs shall be exempted.

(2) The provisions of the Federal Water Resources Act, the water acts of the Länder and any ordinances based on these acts shall remain unaffected.

### **Section 128**

#### **Old dumps**

Sections 39, 40, 42, 48, 50 to 74, 77 to 104 and 106 shall apply mutatis mutandis to exploration and extraction of mineral resources in dumps, if the mineral resources would fall under Section 3 (3) and (4) and come from earlier exploration, extraction or treatment of mineral resources.

### **Section 129**

#### **Test pits, test mines**

(1) Sections 50 to 74 shall apply mutatis mutandis to test pits, and Sections 50 to 62 and 65 to 74 shall apply mutatis mutandis to mining training facilities not falling under Section 2 that are operated as an extraction mine, to tourist mines and to tourist caves.

(2) The Federal Ministry for Economic Affairs and Energy shall be authorized to issue ordinances with the consent of the Bundesrat stipulating that the provisions specified in (1) shall apply mutatis mutandis to any other mining test sites and that accompanying provisions on administrative fines shall be extended to such sites, if this is required for protecting the legal interests specified in Section 55 (1).

### **Section 130**

#### **(repealed)**

### **Section 131**

#### **Mine rescue centers**

(1) Entrepreneurs operating an underground extraction operation or an extraction operation with flammable or explosive facilities, or operating facilities in which irrespirable or poisonous gases or vapors could occur, shall create and maintain mine rescue centers or be affiliated with such.

(2) The Federal Ministry for Economic Affairs and Energy shall be authorized to issue ordinances with the consent of the Bundesrat stipulating the tasks, number, organization and equipment of these centers, if required to ensure fulfillment of safety obligations and for ensuring the preparedness of the centers and their facilities.

(3) Sections 58 to 62 shall apply to mine rescue centers, and if the centers are not maintained by an accident insurance institution, Sections 69 to 74 shall apply mutatis mutandis to monitoring compliance with (1), Sections 58 to 62 and the ordinance provided for in (2).

## **Part IX**

### **Special Provisions for the Continental Shelf**

### **Section 132**

#### **Research activities**

(1) Any party wishing to conduct research directly on the continental shelf that, as such, is obviously unsuitable for discovery or identification of resources shall obtain permission from

the Federal Maritime and Hydrographic Agency regarding the Ordinance on Use of Bodies of Water Above the Continental Shelf and the Air Space Above These Bodies of Water. Any other research activities carried out directly on the continental shelf shall also be deemed exploration beyond Section 4 (1).

(2) Permission may only be denied if

1. the area intended for research is not specified exactly on a map,
2. no information is provided to the Federal Maritime and Hydrographic Agency regarding the research program and its technical execution, or
3. overriding public interest opposes the research, especially if the planned research activities would

- a) impair operation or effects of shipping facilities or signals,
- b) unreasonably impair the use of shipping lanes and airspace, maritime traffic, fishing, or damage flora and fauna,
- c) impair the installation, maintenance and operation of submarine cables or pipelines, as well as oceanographic or other scientific research, more than could not be avoided under the circumstances,

or

- d) there is the potential danger of pollution of the ocean, or
- e) the security of the Federal Republic of Germany is endangered.

(3) Research activities as provided for in (1) sentence 1 shall be subject to monitoring by the Federal Maritime and Hydrographic Agency, unless otherwise provided for in Section 134; Sections 70 and 71 (1) and (2) shall apply. The air traffic control in the air space above the continental shelf shall remain unaffected, due to international agreements.

(4) If research activities are conducted in relation to the continental shelf without permission, the Federal Maritime and Hydrographic Agency shall prohibit continuation of the unauthorized activity. Section 72 (1) sentence 2 shall apply mutatis mutandis. Objections and actions for avoidance against orders as provided for in sentences 1 and 2 shall not have suspensive effect.

### **Section 133**

#### **Submarine cables and transit pipelines**

(1) Erection and operation of a transit pipeline in or on the continental shelf shall be subject to

1. mining permission, and
2. approval under the Ordinance on Use of Bodies of Water Above the Continental Shelf and the Air Space Above These Bodies of Water.

The authority specified in Section 136 shall be responsible for granting permission as provided for in sentence 1 no. 1, and the Federal Maritime and Hydrographic Agency shall be responsible for permission as provided for in sentence 1 no. 2. Permission as provided for in sentence 1 no. 2 may only be granted if permission as provided for in sentence 1 no. 1 has been granted.

(2) Permission as provided for in (1) may only be denied if there is potential danger to human life, health or to equipment and materials or possible impairment of overriding public interest that cannot be prevented or counteracted by time limits, obligations or constraints. The cases specified in Section 132 (2) no. 3 shall in particular be deemed impairment of overriding public interest. Subsequent additional obligations, or changes or amendments to

obligations shall be admissible if they are economically reasonable for the entrepreneur and for pipelines of similar types and can be fulfilled in view of good engineering practice.

(2a) For construction and installation of a transit pipeline that is also a project as provided for in Section 1 (1) no. 1 of the Act on the Assessment of Environmental Impacts, an environmental impact assessment shall be conducted during the approval procedure as provided for in (1) sentence 1 no. 2 pursuant to the Act on the Assessment of Environmental Impacts. When applying the provisions of the Administrative Procedure Act pursuant to Section 18 (1) sentence 4 of the Act on the Assessment of Environmental Impacts, the authorizing authority shall be substituted for the municipality. An official notice in the publication of the authorizing authority and notification published in two national daily newspapers shall make reference to the public disclosure of the plan pursuant to Section 73 (2) of the Administrative Procedure Act and the documents pursuant to Section 19 (2) of the Act on the Assessment of Environmental Impacts.

(3) Sections 58 to 62 and 65 to 74 shall apply mutatis mutandis to erection and operation of a transit pipeline, with the following stipulation:

Unless otherwise provided for in Section 134, the Federal Maritime and Hydrographic Agency shall be responsible for supervision as provided for in Sections 69 to 74 in connection with the subject of the permission as provided for in (1) sentence 1 no. 2; in all other cases the authority specified in Section 136 shall be responsible.

(4) Sentences 1 to 3 shall apply mutatis mutandis to laying and operating submarine cables.

#### **Section 134**

##### **Monitoring and executing administrative acts, cooperation**

(1) In the area of the continental shelf, the enforcement officers specified in Section 6 nos. 1, 2 and 4 of the Federal Act on the Use of Coercive Force by Federal Police Officers Exercising Public Authority, as revised and published in the Federal Law Gazette Part III, outline numbers 201-205, last amended by Article 326 (5) of the Act of 2 March 1974 (Federal Law Gazette I p. 469) shall ensure that

1. no unauthorized exploration, extraction, or research activities are carried out, no unauthorized submarine cables are laid or operated nor an unauthorized transit pipeline erected or operated,

2. the orders issued pursuant to Section 72 (1), Section 132 (4) and Section 133 (3), also in connection with (4), are carried out.

Section 70 (2) shall apply mutatis mutandis.

(2) In the area of the continental shelf, the administrative acts based on this Act shall be carried out pursuant to the Federal Administrative Enforcement Act as revised and published in the Federal Law Gazette Part III, outline numbers 201-204, last amended by Article 40 of the Act of 14 December 1976 (Federal Law Gazette I p. 3341) and the Federal Act on the Use of Coercive Force by Federal Police Officers Exercising Public Authority. The enforcement officers of the Federal Police and customs authorities shall apply direct force.

(3) The Federal Ministries of Transport and Digital Infrastructure, of the Interior and of Finance shall conclude an agreement to regulate cooperation between the federal waterway and shipping authorities, the federal police and customs authorities, in agreement with the Federal Ministry for Economic Affairs and Energy.

#### **Section 135**

##### **Authority to levy fees and charges**

Fees and charges based on Sections 132 to 134 shall be charged for public services provided by federal authorities that are attributable to individual authorities. The Federal Ministry of Transport and Digital Infrastructure shall set out in an ordinance the details of which services shall require a fee, providing for set rates or framework rates, in agreement with the Federal Ministry for Economic Affairs and Energy and without the consent of the Bundesrat. The rates shall be calculated such that the expenditure on staff and materials



involved in the individually attributable public services are covered; regarding individually attributable public services that are beneficial, the commercial benefit or other advantages for the fee payor may be given appropriate consideration.

### **Section 136**

#### **Responsibilities for other administrative tasks**

Any administrative tasks under this Act and related mining ordinances for the area of the continental shelf shall be the responsibility of the competent Land authority, unless otherwise provided for in Sections 132 to 134.

### **Section 137**

#### **Transitional regulation**

(1) The responsibility of the individual Länder in the area of the continental shelf shall be determined in accordance with the principle of equidistance. A field or mining royalty shall be paid to the Land on whose coastal waters the field of an exploration licence, an extraction licence or a mining proprietorship in the area of the continental shelf borders; the allocation of the field to this Land shall be determined using the principle of equidistance.

(2) A definitive system of rights to the continental shelf including a system on allotting the field and mining royalties shall be reserved to a special law.

## **Part X**

### **Federal Testing Laboratory, Committee of Experts, Execution**

#### **Chapter 1**

#### **Federal Testing Laboratory for Mining**

### **Section 138**

#### **Establishment**

The Federal Ministry for Economic Affairs and Energy shall be authorized to establish, by ordinance and with the consent of the Bundesrat, for its area of responsibility, a Federal Testing Laboratory for Mining (Federal Testing Laboratory) as a public law agency without full legal capacity, if necessary to ensure that tests or acceptances as provided for in Section 65 no. 3 or 4 are not conducted by an authority

1. that is not equipped with the latest science and technology for testing or acceptances,
2. that does not have the required specialized and reliable personnel,
3. whose employees cannot verify their neutrality, and in particular are under contract or obligation that could influence neutral testing activities,
4. that is funded by an entrepreneur or is under contract or obligation with an entrepreneur who could influence neutral testing activities,
5. whose financing entity is not capable or willing to provide the funding required for maintenance and proper operation of the laboratory, or
6. whose financing entity is not capable of compensating damage incurred by the government due to its liability for the violation of official duties by laboratory personnel.

### **Section 139**

#### **Responsibilities**

The Federal Testing Laboratory shall conduct tests and acceptances as provided for in Section 65 nos. 3 and 4, to the extent provided for in the mining ordinances of the Federal Ministry for Economic Affairs and Energy pursuant to Section 65, and shall advise the competent authorities and companies as specified in this Act, within the scope of its responsibilities.

#### **Section 140** **Testing, fees**

(1) The Federal Ministry for Economic Affairs and Energy shall be authorized to issue ordinances not requiring consent of the Bundesrat on the contractual utilization of the Federal Testing Laboratory as well as on fees and expenses for its services. Fees shall be determined according to the expenditure on staff and materials required for specific services in consideration of the commercial value to the applicant. The personnel costs may be calculated based on the number of hours employees of the Federal Testing Laboratory spend on average testing or analyzing the various types of objects.

(2) The fee for using a particular service shall as a rule not exceed EUR 10,000. If the service provided requires exceptional cost and effort, especially for testing or acceptance of large facilities, the maximum amount may be exceeded by a corresponding amount.

(3) Flat fees may be arranged for remuneration of several similar services for the same recipient. In calculating the flat fees the smaller amount of administrative effort required shall be used as a base.

### **Chapter 2** **Committee of experts, execution**

#### **Section 141** **Committee of experts for mining**

The Federal Ministry for Economic Affairs and Energy shall be authorized to issue an ordinance not requiring consent of the Bundesrat for creating a committee of experts for mining that shall provide advice in all matters involving mining technology, and in particular safety technology, and shall advise on the mining ordinances to be issued by the ministry. The committee shall include a representative of the Federal Ministry for Economic Affairs and Energy as the chairman, as well as representatives from the participating federal ministries, Land governments, the Land authorities responsible for the topics involved, the accident insurance institutions, and from business and the unions. The ordinance may regulate the details on composition, appointing members and committee procedures.

#### **Section 142** **Competent authorities**

The Land governments or authorities designated by them shall determine which authorities shall be responsible for execution of this Act, to the extent that federal authorities are not responsible. Provisions of Land law stipulating that the authorities of another Land are responsible shall remain unaffected.

#### **Section 143** **Administrative provisions**

(1) The Federal Ministry for Economic Affairs and Energy shall issue general administrative provisions with the consent of the Bundesrat for execution of this Act and the ordinances issued by the federation based on this Act. This shall apply to mining ordinances issued on the basis of Section 68 (2) only if the legal interests specified in Sections 65 to 67 are not given equivalent protection by administrative provisions issued by the competent authorities. Section 68 (3) shall apply mutatis mutandis.

(2) If general administrative provisions as provided for in (1) involve federal authorities, they do not require the consent of the Bundesrat.

### **Part XI** **Recourse to the Courts, Administrative Fines and Criminal Law Provisions**

#### **Section 144** **Complaints before courts of general jurisdiction**

(1) Courts with general jurisdiction shall be responsible for legal disputes on compensation.

(2) The regional courts shall have exclusive jurisdiction for complaints regardless of the amount in dispute. The regional courts in whose district the object of dispute is located shall have exclusive regional jurisdiction.

(3) The complaint shall be lodged within one month. The period shall begin

1. with service of the decision of the authority, or
2. in case an administrative procedure dispute is initiated in the same matter, with the effective conclusion of this procedure.

The period shall be deemed a statutory period within the meaning of the Code of Civil Procedure.

(4) The parties to the dispute shall be the compensation beneficiary and the compensation obligor. This shall apply mutatis mutandis if the dispute involves a settlement payment.

(5) The court shall transmit a copy of the decision or the settlement to the competent authority pursuant to Section 92.

### **Section 145 Regulatory offenses**

(1) The following acts and activities shall be deemed regulatory offenses, whether conducted intentionally or with negligence:

1. to explore freely mineable resources without an exploration licence or to extract them without an extraction licence or mining proprietorship in violation of Section 6 sentence 1,
2. to contravene an enforceable requirement as provided for in Section 16 (3),
3. to exceed the limits of an extraction licence without fulfilling the requirements set forth in Section 44 (1) sentence 1, also in conjunction with Section 47 (1) sentence 1 no. 1,
4. to delay notification regarding the erection, commencement or termination of operations specified in Section 50 (1) sentence 1 or (2) sentence 1 in violation of these provisions,
5. to not attach an extraction plan as required to the notification in violation of Section 50 (3) sentence 1, or to delay notification regarding a substantial alteration in violation of Section 50 (3) sentence 2,
6. to erect or operate mining operations requiring an operating plan pursuant to Section 51 without an approved operating plan, or to terminate or deviate from the approved operating plan without fulfilling the requirements of Section 57 (1) sentence 1 or (2),
7. to not attach the required operating log to the closure plan in violation of Section 53 (2),
8. to contravene an enforceable requirement on which an approved operating plan is contingent as provided for in Section 55, or to contravene an enforceable requirement pursuant to Section 56 (1) sentence 2, also in conjunction with Section 56 (3),
9. to not provide notification of an order, or incorrectly, incompletely or with delay in violation of Section 57 (1) sentence 2, also in conjunction with Section 57 (2),
10. to contravene a provision of Section 59 (1) or Section 60 (1) regarding employment, appointment or dismissal of responsible persons or the provision of Section 60 (2) regarding the naming of responsible persons or notification regarding changes in their position or their departure,
11. to not inform the responsible person of administrative acts, or incorrectly, incompletely or with delay in violation of Section 61 (2) sentence 1,

12. to not ensure that operating plans and their approval can be viewed at any time in violation of Section 61 (2) sentence 2,
  13. to not prepare or update the mine plans as required, nor submit them to the competent authority nor correctly store them in violation of Section 63 (1) to (3) sentence 1,
  - 13a. (repealed)
  14. to not provide information or documents, or incorrectly or incompletely, in violation of Section 70 (1),
  15. to not permit pieces of property, business premises, facilities or watercraft to be entered, tests or tours to be conducted, samples to be taken or business or operations records to be viewed, or to not accompany visitors on tours, all in violation of Section 70 (2) sentence 4 or 5,
  16. to continue employing a responsible person in violation of an enforceable prohibition pursuant to Section 73 (1) sentence 1,
  17. to not provide without delay if requested the necessary manpower or resources in violation of Section 74 (2) sentence 1,
  18. to not report an operating event, or to report incorrectly, incompletely, or delayed, in violation of Section 74 (3),
  19. to not conduct the requested measurements or to not submit the results, or incorrectly, incompletely or with delay in violation of Section 125 (1) sentence 1 or 2, or to not permit entering of a piece of property or installation of surveying markers in violation of Section 125 (3) sentence 1,
  20. to conduct research in the area of the continental shelf without permission pursuant to Section 132 (1) sentence 1,
  21. to lay, erect or operate a submarine cable or a transit pipeline in or on the continental shelf without the authorizations as provided for in Section 133 (1) sentence 1, also in conjunction with (4), or
  22. to not immediately report operations in violation of Section 169 (1) no. 1 or to not appoint or name responsible persons in due time in violation of Section 169 (1) no. 3.
- (2) The provisions of (1)
- a) nos. 4, 6 and 8 to 18 shall also apply to testing of the subsoil and underground storage sites pursuant to Section 126 (1), to the installation and operation of facilities used for storage, securing and final storage of radioactive material pursuant to Section 126 (3), as well as for exploration and extraction of resources in old dumps pursuant to Section 128,
  - b) nos. 4, 6, 8 to 12 and 14 to 18 shall also apply to drilling holes pursuant to Section 127 (1),
  - c) nos. 4, 6, 8 to 16 and 18 shall also apply to test mines pursuant to Section 129 (1),
  - d) nos. 4, 6, 8 to 12, 14 to 16 and 18 shall also apply to training mines, as well as to tourist mines and tourist caves pursuant to Section 129 (1),
  - e) nos. 10, 11 and 14 to 17 shall also apply to mine rescue centers pursuant to Section 131 (3),
  - f) nos. 14 and 15 shall also apply to research activities pursuant to Section 132 (3),

g) nos. 10, 11, 14 to 16 and 18 shall also apply to transit pipelines pursuant to Section 133 (3) and submarine cables pursuant to Section 133 (4).

(3) It is also a regulatory offense to intentionally or negligently violate a ordinance as provided for in

1. Section 32 (1), Sections 67, 123, Section 125 (4) or Section 131 (2), or

2. Section 65 and Section 66 with the exception of sentence 1 no. 4 letter e

if the ordinance refers to this regulatory fine provision in a specific case.

(4) A regulatory offense in cases specified in (1) nos. 1, 2, 6, 8 to 11, 15 to 18, 20, 21 and in (3) no. 2 may be punished with a regulatory fine of up to EUR 25,000, in cases specified in (1) nos. 3 to 5, 7, 12 to 14, 19, 22 and in (3) no. 1 with a regulatory fine of up to EUR 2,500; in all cases also in conjunction with (2).

(5) The administrative authority within the meaning of Section 36 (1) no. 1 of the Act on Regulatory Offenses responsible for regulatory offenses in the area of the continental shelf in connection with research activities (Section 132) and in connection with the monitoring task of the federal authorities specified in Section 134 (1) shall be deemed the authority specified by the Federal Ministry of Transport and Digital Infrastructure by ordinance without the consent of the Bundesrat.

#### **Section 146 Criminal offenses**

(1) A prison sentence of up to five years or a fine shall be imposed on anyone who commits an administrative offense as specified in Section 145 (1) nos. 6, 8, 9, 16 and 17, also in conjunction with Section 145 (2), or as specified in Section 145 (3) no. 2, and who thereby endangers the life or health of others or third-party things of significant value.

(2) In particularly serious cases the punishment shall be imprisonment of between six months and ten years. A case is usually deemed particularly serious if the offender endangers the life or health of a large number of persons or recklessly causes the death or grievous bodily harm to a human being (Section 226 of the German Criminal Code).

(3) Whoever, in cases specified in subsection (1)

1. negligently causes danger, or

2. acts negligently and thereby negligently causes danger,

shall be punished with imprisonment of up to two years or with a fine.

#### **Section 147 Investigation of crimes**

The Land authorities responsible for enforcing the law shall have the rights and responsibilities of the authorities of the police service when investigating crimes as described in Section 146.

#### **Section 148 Location of the offense, jurisdiction**

(1) If an offense as described in Section 146 is not committed in Germany, German criminal law shall apply regardless of the law applicable to the location where the offense was committed.

(2) In the area of the continental shelf, the officials at the authorities specified in Section 132 (1), Section 134 (1) and Section 136 shall investigate any criminal offenses as specified in Section 146 and shall not issue any orders allowing for postponement in order to avoid cover-up; the officials shall have the rights and responsibilities of police officers in accordance with the provisions of the Code of Criminal Procedure; to this extent they are investigators of the public prosecution office.

(3) If court jurisdiction pursuant to Sections 7 to 10, 13, 98 (2), Section 128 (1), Section 162 or Section 165 of the Code of Criminal Procedure or pursuant to Section 157 of the Courts

Constitution Act for a criminal offense as provided for in Section 146 is not established, Hamburg shall be the place of jurisdiction, with the Local Court in Hamburg having responsibility.

**Part XII**  
**Transitional and Final Provisions**

**Chapter 1**  
**Old rights and agreements**

**Section 149**  
**Requirements for maintaining old rights and agreements**

(1) In accordance with the provisions of this Act, the following shall be maintained:

1. mining proprietorships,
  2. authorisations, licences and agreements regarding exploration or extraction of resources whose exploration and extraction was reserved for the government in accordance with the mining provisions of the Länder effective at the time this Act entered into force, as well as licences as provided for by the Act on Preliminary Administration of Rights to the Continental Shelf of 24 July 1964 (Federal Law Gazette I p. 497), last amended by Article 8 of the Act of 28 March 1980 (Federal Law Gazette I p. 373), with the exception of permission for transit pipelines,
  3. extraction rights in rem individually entered in the land registry that are encumbrances on a right maintained pursuant to no. 1,
  4. mines, mining concessions and other rights and special rights to exploration and extraction of resources that already existed at the time the mining acts and other mining provisions of the Länder entered into force that were effective at the time this Act entered into force,
  5. special rights of the property owners and individual rights in rem registered by property owners to exploration or extraction of the resources specified in Section 3 (3) sentence 1 or 2 no. 2, with the exception of the rights as specified in no. 7,
  6. agreements that the property owner or any other party entitled to exploit the land has concluded regarding exploration and extraction of the resources specified in Section 3 (3) sentence 1 or 2 no. 2 that are the subject of the rights specified in no. 5,
  7. rights of property owners to dispose of resources subject to a right pursuant to no. 1 that has been maintained,
  8. rights to land annuities or other charges to be paid for maintained mining concessions as provided for in no. 4,
  9. rights related to Erbstollen (the deepest water drainage tunnel in a mining district)
- if these rights and agreements
- a) are maintained, introduced, transferred, established or not rescinded pursuant to the applicable mining provisions of the Länder or the provisions of the Act on Preliminary Administration of Rights to the Continental Shelf that were in effect when this Act entered into force,
  - b) are reported to the competent authority along with the documents required for proving their existence within three months of entry into force of this Act, and
  - c) have been confirmed as maintained by the competent authority.

Only the holder of the right is authorized to make notifications as provided for in sentence 1 letter b, and regarding agreements, only the parties to the agreement. In case of co-ownership or other joint rights notification by one joint right holder shall be sufficient.

(2) Subsection (1) shall apply to rights registered in the land registry as provided for in (1) sentence 1, with the exception of the rights specified in (2a), with the following stipulation:

1. The period specified in (1) sentence 1 letter b shall commence with the date on which the competent authority announces a public invitation pursuant to sentences 2 and 3.
2. No documents must be attached to the notification to prove existence of the rights.
3. The holders of the rights in rem entered in the ground registry shall also be authorized to submit notifications.

The public invitation to notify the authorities shall be published within two years after this Act has entered into force by the competent authority in the Federal Gazette and in the official publication of the competent authority. The public invitation shall request in particular:

1. the description of the right as specified in the land registry as provided for in (1) sentence 1;
2. the holder of this right entered in the land registry;
3. reference to the legal consequences arising from (4) and (5).

(2a) For rights as provided for in (1) sentence 1 no. 5 that have been entered in the land registry on the basis of the law repealed in Section 176 (1) no. 50, subsection (1) shall apply with the stipulation that the period specified in (1) sentence 1 letter b does not apply.

Subsection (2) sentence 1 nos. 2 and 3 shall apply mutatis mutandis.

(3) Subsection (1) notwithstanding, in areas in which the property owner's right of disposal of the resources as specified in Section 3 (3) sentence 1 or 2 no. 2 was not revoked, property owners and other parties with exploitation rights who derive their rights from real property ownership shall retain their rights of disposal of a particular resource in the geographical boundaries of their property or of their exploitation rights, with the stipulation that

1. prior to this Act entering into force
  - a) the use of this particular resource had already begun, or
  - b) the piece of land had already increased in value due to this particular resource,
2. the right is reported to the competent authority within three years after this Act has entered into force, and
3. the competent authority confirms that the right has been maintained.

If notifications were made by other holders of exploitation rights, the notification shall include the content of the agreement concluded with the property owner or other authorized parties, in particular indication of the contractual area, along with fulfillment of the conditions under sentence 1 no. 1. Subsection (1) sentences 2 and 3 and subsection (2) sentence 1 no. 3 shall apply mutatis mutandis.

(4) Confirmation may only be denied if in cases defined in subsections (1) and (2) the requirements set forth in (1) sentence 1 letter a have not been verifiably fulfilled, and for cases under (3), the requirements of (3) sentence 1 no. 1 have not been verifiably fulfilled.

(5) Rights and agreements that are not reported, or not within a deadline, shall expire three years after the end of the deadline for notification. Rights and agreements not falling under sentence 1 that have been denied shall expire when denial becomes final and binding.

(6) If a right that has expired pursuant to (5) was registered in the land registry, the competent authority shall request the land registry office to delete the right.

(7) Section 6 sentence 1 shall not apply to exploration and extraction on the basis of a maintained right or agreement as provided for in (1) sentence 1 nos. 1 to 4 and 7. The same shall apply in the cases specified in (5) until the rights or agreement have expired.

### **Section 150**

#### **Exceptions to freely mineable resources**

- (1) The resources specified in Section 3 (3) sentence 1 or 2 no. 2 which are the subject of a maintained right or a maintained agreement as provided for in Section 149 (1) sentence 1 no. 5 or 6 or (3) shall remain freehold resources until the right or the agreement has expired or is rescinded.
- (2) The resources not specified in Section 3 (3) sentence 1 and not falling under Section 3 (3) sentence 2 nos. 1 and 2 letter b that are the subject of a maintained right or a maintained agreement as provided for in Section 149 (1) sentence 1 nos. 1 to 4 or that are the subject of an extraction licence granted pursuant to Section 172, shall remain freely mineable resources until the right, the agreement or the licence has expired or is rescinded.

### **Section 151**

#### **Mining proprietorship**

(1) A maintained mining proprietorships as provided for in Section 149 (1) sentence 1 no. 1 grants the unlimited exclusive right, in accordance with the provisions of this Act

1. to explore, extract and acquire ownership in the resources located in the mining proprietorship field specified in the deed of grant,
2. to incidentally extract other resources in the mining proprietorship field and to acquire ownership in them,
3. to extract the resources that must be stripped or released when installing auxiliary structures and to acquire ownership in these resources,
4. to install and operate the required facilities as provided for in Section 2 (1) no. 3,
5. and to request cession of land.

(2) In all other cases Section 9 shall apply with the following stipulation:

1. The right pursuant to (1) no. 1 shall also extend to the resources specified in the deed of grant, if they are located in the dumps of an earlier mine operated under a expired licence that is located within the mining proprietorship field, unless the dumps are the property of the property owner;
2. Sections 18 and 31 shall not apply;
3. additions and consolidations that exist when this Act enters into force shall remain unaffected by Section 9 (2); the Länder may issue provisions on rescinding them;
4. consolidation and exchange of mining proprietorship granted after this Act enters into force are inadmissible.

### **Section 152**

#### **Maintained exploration rights and agreements, research activities**

(1) Maintained rights and agreements as provided for in Section 149 (1) sentence 1 nos. 1, 2 and 4 that only grant the right to explore resources shall be deemed exploration licences pursuant to Section 7 for the resources, the time period and the area for which they have been maintained, unless otherwise provided for in this Act.

(2) Section 18 shall apply if a reason for revocation occurs or continues to exist after entry into force of this Act. An extension is only admissible under the conditions stipulated in Section 16 (4) sentence 2, even if it is provided for by the terms of the rights or agreements in accordance with federal or Länder mining provisions applicable after entry into force of this



Act. Unlimited rights and agreements shall expire ten years after the date on which this Act enters into force. If an exploration licence is issued anew, the application of the holder of the right arising from the expired right or agreement shall take precedence over all other applications if there is no reason for denying his application pursuant to Section 11; Section 14 shall not apply in this case.

(3) If a right as provided for in (1) has been entered in the land registry, the competent authority shall request the land registry office to delete the right.

(4) Maintained rights as provided for in Section 149 (1) sentence 1 no. 2 that grant research rights only for those research activities in the area of the continental shelf that, as such, are obviously not suitable for exploring for resources, shall apply to the research activities, the time period and the area for which they have been maintained, as permission pursuant to Section 132, unless otherwise provided for in this Act. The legal content of these rights shall remain unaffected to the extent that it does not violate this Act. Unlimited rights shall expire ten years after the date on which this Act enters into force.

### **Section 153**

#### **Concessions, exploration licences and extraction agreements**

Maintained rights and agreements as provided for in Section 149 (1) sentence 1 nos. 2 and 7 that grant the right to extract or dispose of resources shall be deemed extraction licences pursuant to Section 8 for the resources, the time period and the area for which they have been maintained, unless otherwise provided for in this Act. Section 152 (2) sentence 1 and (3) shall apply mutatis mutandis. Section 16 (5) sentence 3 shall apply mutatis mutandis to an extension of time-limited rights.

### **Section 154**

#### **Mines, mining rights and special rights**

(1) Maintained rights and agreements as provided for in Section 149 (1) sentence 1 no. 4 that grant the right to explore and extract resources shall be deemed mining proprietorships as provided for in Section 151 for the resources and the area for which they have been maintained. Rights in all of the resources excluded from the right of disposition of the property owner that were granted or transferred according to their wording, shall apply to the resources that were freely mineable or reserved for the government pursuant to the mining provisions of the Land or of the part of the Land applicable to these rights when this Act entered into force. If it is not clear which resources a right refers to, the legal content of the right shall be determined by the competent authority at the time this Act enters into force. In doing so the authority shall also give proper consideration to the type and scope of the activities carried out in the past thirty years prior to entry into force of this Act.

(2) If a deed as required by the mining provisions of the Länder applicable after entry into force of this Act for a mining proprietorship in freely mineable resources was not issued when the right as provided for in (1) sentence 1 was granted or transferred, the competent authority shall issue a deed as a substitute for the missing deed and if requested shall serve it on the holder of the right at the time this Act enters into force. The deed shall correspond to Section 17 (2) sentence 2 and contain the content of the determinations as provided for in (1) sentences 3 and 4.

(3) If a right as provided for in (1) sentence 1 has not been entered in the land registry or not registered as a mining proprietorship, Section 17 (3) shall apply mutatis mutandis. A certified copy of the mining authorization deed shall be substituted by a certified copy of the deeds of grant or an equivalent deed.

### **Section 155**

#### **Extraction rights in rem**

Extraction rights in rem that have been maintained as provided for in Section 149 (1) sentence 1 no. 3 shall substitute for the mining proprietorship they encumber for the resource, the time period and the area for which they have been maintained. Sections 24 to 29 shall not apply.

### **Section 156**

#### **Maintained rights and agreements regarding freehold resources**

- (1) The object of maintained rights and agreements as provided for in Section 149 (1) sentence 1 nos. 5 and 6 shall remain unaffected, unless otherwise provided for in this Act.
- (2) Rights as provided for in (1) may only be assigned to another party by contract or another party may only be allowed to exercise them with the consent of the competent authority. The same shall apply to changes in agreements as provided for in (1) and in Section 149 (3) sentence 2, as well as to allowing another party to exercise the rights of exploration or extraction arising from such an agreement. Consent may be denied only if the assignment, permission to exercise the rights or change in the agreement would impair or endanger the practical and systematic exploration or extraction of the resources.
- (3) Rights and agreements as provided for in (1) shall expire in accordance with the provisions of the Länder applicable at the time this Act enters into force, unless they have already expired for other reasons. Section 149 (6) shall apply mutatis mutandis.

### **Section 157**

#### **Land annuities**

Maintained land annuities and other charges as provided for in Section 149 (1) sentence 1 no. 8 shall be paid in accordance with the provisions applicable to them when this Act enters into force.

### **Section 158**

#### **Water drainage tunnel rights**

- (1) Maintained water drainage tunnel rights (Erbstollengerechtigkeiten) as provided for in Section 149 (1) sentence 1 no. 9 shall be subject to the provisions applicable at the time this Act enters into force, unless (2) provides otherwise.
- (2) The holder of water drainage tunnel rights shall apply to have this right entered in the land registry within three years after entry into force of this Act. Water drainage tunnel rights that are not entered into the land registry by this deadline shall expire, unless they have already expired for other reasons.

### **Section 159**

#### **Old rights and exploration for scientific purposes**

Maintained old rights and agreements that, on their own or in addition to other authorizations, grant exclusive exploration rights, shall not exclude grant of an exploration licence for large-scale exploration or one or more exploration licences for scientific purposes as provided for in Section 7 for the same field.

### **Section 160**

#### **Expropriation of old rights and agreements**

- (1) The maintained rights and agreements as provided for in Section 149 may be entirely or partly rescinded by the competent authority in return for compensation, if impairment of the common good can be expected from their continuation or maintenance or execution of the agreements, especially if the right or the agreements extend to resources of special economic importance and these resources cannot be extracted because the right holder is not exercising his right or is not executing the agreement and will also not commence use or execution in the foreseeable future under the current circumstances.
- (2) Compensation shall be made as a single payment of money; Section 84 (2), (4) sentence 3 and Section (5) sentence 1, Section 85 (1) and (2), Section 86 (1) and (3), Section 89 (2) and (4), and Section 90 (1) nos. 2 and 4, (2) and (4) shall apply mutatis mutandis. If a right in rem is rescinded, Articles 52 and 53 of the Introductory Act to the German Civil Code shall apply to compensation.
- (3) Compensation shall be paid by the Land in which the resources are located and to which the entirely or partially rescinded right or the entirely or partially rescinded agreement

referred; if the resources are located in the area of the continental shelf, payment shall be rendered by the federal government.

(4) The provisions on formal administrative proceedings as stipulated in Part V Chapter 1 of the Administrative Procedure Act shall apply to expropriation as provided for in (1) to (3).

(5) If a right that was entirely or partially rescinded pursuant to (1) is registered in the land registry and the rescission is final and binding, the competent authority shall request the land registry office to correct the entry.

(6) Regarding rights as provided for in Section 149 (2a) that have not yet been confirmed, subsections (1) to (5) shall apply mutatis mutandis.

### **Section 161**

#### **Expanding mining proprietorship to rescinded length fields**

(1) If the holder of a mining proprietorship makes a request to have the mining proprietorship for a length field entirely or partially rescinded pursuant to Section 151 in connection with Section 20 or by means of expropriation pursuant to Section 160, the mining proprietorship for a rectangular field that

1. was granted for the same resource or resources as the mining proprietorship for the length field and

2. completely encloses the area affected by the rescission,

shall be extended at the request of the holder of the mining proprietorship for the rectangular field to the area of the length field affected by the rescission. If only a part of the mining proprietorship for a linear field affected by the rescission is enclosed by a mining proprietorship granted for the same resource for a rectangular field, sentence 1 shall apply to the enclosed part.

(2) A rectangular field shall be deemed a field that fulfills the requirements set forth in Section 4 (7). A length field shall be deemed a field that follows the length of depth of a deposit. A length field as provided for in (1) shall also be deemed a field that, just as width fields, vertical deposit fields or rectangular claims, does not fulfill the requirements of either sentence 1 or sentence 2.

### **Section 162**

#### **Decision, legal changes**

(1) In the decision regarding extension of the mining proprietorship for a rectangular field to the area of a mining proprietorship for a length field entirely or partially rescinded by expropriation pursuant to Section 160, the competent authority shall require the applicant to repay to the Land the compensation paid pursuant to Section 160 (2) sentence 1, not to exceed the fair market value of the area to which the mining proprietorship for a rectangular field is extended. The date the decision was issued shall be decisive for calculating the fair market value to be determined in accordance with Section 85 (2).

(2) The extension of the rectangular field shall take effect when the decision becomes final and binding. The competent authority shall prepare the required additional deeds. The competent authority shall request the land registry office to enter the legal change in the land registry.

## **Chapter 2**

### **Dissolving and liquidating mining unions**

#### **Section 163**

##### **Dissolution and conversion**

(1) The unions existing at the time this Act enters into force, with or without a legal personality, shall be dissolved at the end of the day on 1 January 1986, if the following has not taken place by then:

1. a resolution for conversion of the union pursuant to the provisions of the Transformation Act or the provisions of Sections 384, 385 and 393 of the Stock Corporation Act has been reported for entry in the commercial register,
2. a resolution on merger of the union with a stock company or a limited partnership with share capital pursuant to Sections 357 or 358 of the Stock Corporation Act, or with a limited liability company pursuant to the provisions of the second subchapter of the Law on Increase in Capital from Company Reserves and on Mergers of Limited Liability Companies has been reported for entry in the commercial register, or
3. the union has been dissolved by resolution of the membership or by other means.

If the resolution on conversion or merger was contested, the day specified in sentence 1 shall be substituted by the day following the six-month period after the decision becomes effective. New unions shall not be formed.

(2) The term “union” and the name previously used by the union may be adopted in the company name of the company to which the union has been converted. Other provisions on company names shall remain unaffected.

(3) Transactions and negotiations taking place between 1 January 1982 and 1 January 1986 or on a date specified in (1) sentence 2 for the purpose of a conversion or merger as provided for in (1) sentence 1 nos. 1 or 2 shall be exempted from fees and charges levied by courts and authorities, if not required by provisions of Land law. This exemption includes entries and deletions in public records; it shall also apply to notarial recordings and certifications. Sentences 1 and 2 shall apply correspondingly to the conversion of a union without legal personality to a union with legal personality, if the conversion serves to prepare for a conversion falling under (1) sentence 1 nos. 1 or 2 to a limited liability company, a merger with this type of company or a conversion or merger falling under the Stock Corporation Act.

(4) For unions acting as entrepreneurs as provided for in Section 4 (5) on 1 July 1985, (1) to (3) shall apply with the stipulation that the date 1 January 1994 shall be substituted for 1 January 1986.

#### **Section 164**

##### **Liquidation**

(1) A dissolved union or a union deemed dissolved shall be liquidated. Continuation of the union is inadmissible.

(2) The representative (chairman of the board of the mine) shall provide the names of the liquidators to the court having jurisdiction for the union without delay, or at the latest three months after the date specified in Section 163 (1) sentence 1 or 2 or (4). If the court has received no names of liquidators by this date, the court shall appoint liquidators ex officio. The competent authority shall notify the court with jurisdiction for the union that the union shall be liquidated, and provide the name of the union, and if known, the name of the representative (chairman of the board of the mine) and the names of the shareholders.

(3) The liquidators shall ensure that liquidation is executed without delay.

#### **Section 164a**

##### **Transition**

The continuation of a union dissolved pursuant to Section 163 (1) shall be deemed to have been resolved upon entry into force of Section 163 (4), if distribution of assets among the shareholders had not yet commenced and the union was acting as an entrepreneur as provided for in Section 4 (5) on 1 July 1985.

#### **Section 165**

##### **Law continuing in force**

Up until the date specified in Section 163 (1) sentences 1 or 2 and for the period of liquidation pursuant to Section 164, the mining provisions of the Länder applicable to unions

when this Act enters into force shall remain applicable, unless otherwise provided for in Section 163 (1) sentence 3 and Section 164.

### **Chapter 3 Other transitional and final provisions**

#### **Section 166 Existing auxiliary structures**

The auxiliary structures existing at the time this Act enters into force that were built in accordance with provisions applicable prior to this date shall be deemed auxiliary structures as provided for in this Act.

#### **Section 167 Continued applicability of operating plans and accreditations**

(1) For activities and facilities within the meaning of Section 2 and Sections 126 to 131 that are subject to mining supervision when this Act enters into force, the following shall apply:

1. The operating plans approved at the time this Act enters into force shall be deemed approved as provided for in this Act, for the duration of their term.
2. Persons whose capability for managing and supervision operations is accredited (supervisors) shall be deemed responsible persons as provided for in Sections 58 and 59 for the term of the accreditation, not however to exceed two years after this Act has entered into force, for the business areas allotted to them at the time this Act entered into force.
3. The persons who have been appointed and whose names have been provided (responsible persons) to the mining authority by the entrepreneur (mine owner, mining company), in the scope of its responsible management of operations to carry out certain responsibilities and powers for safe and orderly operations, shall be deemed responsible persons as provided for in Sections 58 and 59, in accordance with the responsibilities and powers assigned to them at the time of entry into force of this Act.

(2) Subsection (1) nos. 2 and 3 shall no longer apply as of the date from which the expertise of the persons specified in (1) nos. 2 and 3 is not sufficient for the business areas or responsibilities and powers assigned to them on the basis of any mining ordinance issued in accordance with Section 66 sentence 1 no. 9, or if the entrepreneur changes their appointment as provided for in Section 59.

#### **Section 168 Permission for transit pipelines**

The temporary permits for construction or operation of transit pipelines issued under Section 2 of the Act on a Temporary System of Rights to the Continental Shelf shall be deemed permits as provided for in Section 133 for the duration of their term.

#### **Section 168a Authorization in the area of expanded territorial waters**

Existing rights in the area of expanded territorial waters pursuant to the resolution of the federal government of 19 October 1994 (Federal Law Gazette I p. 3428), in particular permission to conduct research as provided for in Section 132 or to erect or operate transit pipelines as provided for in Section 133 shall be deemed permits, exploration licences, exploration licences or other official decisions in accordance with their terms and with legal provisions applicable to them as of 1 January 1995.

#### **Section 168b Existing submarine cables**

If submarine cables have already been laid and are in operation, they shall be deemed approved in accordance with Section 133 (4) if they fulfill the requirements of Section 133 (2).

### **Section 169**

#### **Transitional period for submission to mining supervision, terminated operations**

(1) For activities and facilities as provided for in Section 2 and Sections 126 to 131 (mining operations) that were not subject to mining supervision prior to entry into force of this Act, the following shall apply:

1. the entrepreneur shall notify the competent authority without delay of its mining operations.
2. The operating plans required under Section 51 or Sections 126 to 130 in conjunction with Section 51 for erection or operation of the mining operation shall be submitted to the competent authority within four months of entry into force of this Act for approval. If the operating plan is submitted on time, an approved operating plan is not necessary for erection or operation of the mine operation until the decision on approval becomes final and binding. Proof of notification as provided for in Section 126 (1) sentence 2 is not required for underground storage sites.
3. If responsible persons must be appointed as stipulated by Sections 126 to 131 in conjunction with Section 59 (2), they shall be appointed within four months after entry into force of this Act and their names provided to the competent authority.

(2) This Act shall not apply to mining operations as provided for in (1) that were permanently closed down or that extract geothermal heat and use this heat for bathing or therapy purposes. Furthermore, this Act shall not apply to mining operations producing bricks from clays as provided for in Section 3 (4) no. 1.

### **Section 170**

#### **Liability for damage caused**

Damage as provided for in Section 114 that was caused exclusively prior to entry into force of this Act shall be subject to the provisions applicable to such damage prior to entry into force of this Act. Damage as provided for in Section 114 that was caused exclusively prior to 12 August 2016 shall be subject to Section 120 and 126 in the version applicable until that time.

### **Section 170a**

#### **Statute of limitations for subsidence damage**

Article 229 Section 6 of the Introductory Act to the German Civil Code shall apply mutatis mutandis, with the stipulation that Section 117 (2) in the version in effect prior to 1 January 2002 shall be equivalent to the provisions of the German Civil Code on the statute of limitations in the version in effect prior to 1 January 2002.

### **Section 171**

#### **Initiated proceedings**

- (1) Proceedings regarding assignment of real property or other expropriation proceedings that have already been initiated shall be decided in accordance with the previously applicable provisions. If the competent authority has not yet set compensation, the provisions of this Act regarding compensation in equivalent or similar cases shall apply.
- (2) In any other proceedings already initiated a decision shall be made in accordance with the provisions of this Act.
- (3) Objections to administrative acts taken prior to entry into force of this Act that were based on expired provisions and are not yet final and binding, as well as the continuation of proceedings and the decision, shall comply with the provisions of this Act on the respective administrative acts. Any legal remedy admissible under provisions previously in effect shall

be deemed a legal remedy admissible under this Act, even if it was filed with an authority no longer competent for such.

(4) Any challenges to court decisions issued prior to entry into force of this Act that are not yet final and binding or were issued in any court proceedings pending at the time this Act enters into force, as well as the continuation of proceedings until a final and binding decision, shall comply with the provisions previously in effect.

#### **Section 171a** **Transitional provision**

Procedures pursuant to Section 52 subsection 2a to 2c of the Federal Mining Act shall be completed pursuant to the version of the act in force on 29 July 2017 if

1. the procedure to provide information about the subject, scope and methods of the environmental impact assessment pursuant to Section 52 subsection 2a sentence 2 has been launched before 16 May 2017 or
2. the information has been provided before 16 May 2017 pursuant to Section 57a subsection 2 sentence 2 to 5 of this Act in conjunction with Section 2 of the Ordinance on the Assessment of Environmental Impacts of Mining Projects in the version in force until then.

Section 74 subsection 1 of the Act on the Assessment of Environmental Impacts shall remain unaffected.

#### **Section 172** **Claims**

Regarding claims that have already been filed at the time this Act enters into force and for which a mining proprietorship would have been granted under the respective applicable laws of the Länder on claims and grants of mining proprietorships, an extraction licence shall be granted for the resources and the field for which a mining proprietorship would have been granted, if the prospector does not waive the grant within twelve months after entry into force of this Act.

#### **Section 173** **Contiguous operations**

(1) If activities and facilities pursuant to Section 2 (operations) conducted for underground exploration or extraction of freely mineable or freehold resources border directly on operations or part of operations that explore or extract other resources at the surface with shared operations, the competent authority may stipulate that the provisions of this Act shall apply to the activities and facilities of the latter operations, if this is advisable in view of the inseparability of work and operations underground and at the surface. The stipulation pursuant to sentence 1 shall be rescinded if one of the conditions for issuing it is no longer fulfilled.

(2) If activities and facilities pursuant to Section 2 for exploring or extracting freely mineable or freehold resources border directly on a power plant required for exploring or extracting resources with shared operations, or border directly on a fireclay factory with shared operations, the competent Land government may, if the power plant or the fireclay factory is a mining operation pursuant to the provisions applicable at the time this Act enters into force, issue ordinances stipulating that the provisions of this Act shall apply to the activities and facilities of the power plant or the fireclay factory if this appears necessary in view of the inseparability of work and operations.

#### **Section 174** **(repealed)**

#### **Section 175** **(repealed)**

## Section 176

### Expiry of Land law, references

(1) Provisions of Land law regulating subjects that are regulated in this Act or that contradict this Act shall expire upon entry into force of this Act, unless otherwise provided by this Act, in particular:

#### Baden-Württemberg

1. the Baden Mining Act as published on 17 April 1925 (Badisches Gesetz- und Verordnungsblatt p. 103), last amended by Article 1 of the Third Act to Amend Mining Provisions of 8 April 1975 (Gesetzblatt für Baden-Württemberg p. 237) and Sec. 69 (6) of the Environmental Protection Act of 21 October 1975 (Gesetzblatt für Baden-Württemberg p. 654; rev. 1976 p. 96);
2. the Baden Mining Act of 7 October 1874 (Regierungsblatt für das Königreich Württemberg p. 265), last amended by Sec. 69 (5) of the Environmental Protection Act of 21 October 1975 (Gesetzblatt für Baden-Württemberg p. 654; rev. 1976 p. 96) and Sec. 47 (1) of the Act on Execution of the Courts Constitution Act and Administrative Procedures of the Courts of Ordinary Jurisdiction (AGGVG) of 16 December 1975 (Gesetzblatt für Baden-Württemberg p. 868);
3. The Basic Mining Act for the Prussian States of 24 June 1865 (Gesetz-Sammlung für die Königlichen Preußischen Staaten p. 705), last amended by Article 4 of the Third Act to Amend Mining Provisions of 8 April 1975 (Gesetzblatt für Baden-Württemberg p. 237) and Sec. 69 (7) of the Environmental Protection Act of 21 October 1975 (Gesetzblatt für Baden-Württemberg p. 654; rev. 1976 p. 96);
4. the Act on Extraction of Oil and other Mineral Resources (Oil Act) of 12 May 1934 (Preußische Gesetzsammlung p. 257), last amended by Article 5 of the Second Act to Amend Mining Provisions of 18 May 1971 (Gesetzblatt für Baden-Württemberg p. 161);
5. The Phosphorite Act of 16 October 1934 (Preußische Gesetzsammlung S. 404), last amended by Sec. 16 of the Act to Amend Mining Provisions of 24 September 1937 (Preußische Gesetzsammlung p. 93);
6. the Ordinance on Permission for Exploration and Extraction of Oil and Other Mineral Resources (Oil Ordinance) of 13 December 1934 (Preußische Gesetzsammlung p. 463), last amended by Sec. 17 of the Act to Amend Mining Provisions of 24 September 1937 (Preußische Gesetzsammlung p. 93);
7. the Ordinance on Police Monitoring by Mining Officials of Mining Facilities for Incidental Extraction and Treatment of 22 January 1938 (Preußische Gesetzsammlung p. 19);
8. the Act on Containerless Underground Gas Storage (Gas Storage Act) of 18 May 1971 (Gesetzblatt für Baden-Württemberg p. 172);

#### Bavaria

9. the Mining Act as published on 10 January 1967 (Bayerisches Gesetz- und Verordnungsblatt p. 185), last amended by Article 52 (11) of the Bavarian Act on Compensable Expropriation of 11 November 1974 (Bayerisches Gesetz- und Verordnungsblatt p. 610);
10. the Act to Amend the Mining Act of 17 August 1918 (Bereinigte Sammlung des Bayerischen Landesrechts Band IV S. 162);
11. the Notification of 17 August 1918 of Execution of the Act to Amend the Mining Act of 17 August 1918 (Bereinigte Sammlung des Bayerischen Landesrechts Band IV p. 163);



12. the Act on Graphite Extraction (Graphite Act) of 12 November 1937 (Bereinigte Sammlung des Bayerischen Landesrechts Band IV p. 164);
13. the Act to Amend the Mining Act and the Water Act of 23 March 1938 (Bereinigte Sammlung des Bayerischen Landesrechts Band IV p. 165);
14. the Notification on Exploration and Extraction of River Gold (Gold Washing) of 19 May 1938 (Bereinigte Sammlung des Bayerischen Landesrechts Band IV p. 165);
15. the Act to Amend the Mining Act of 29 December 1949 (Bereinigte Sammlung des Bayerischen Landesrechts Band IV p. 166);
16. the Act on Containerless Underground Gas Storage of 25 October 1966 (Bayerisches Gesetz- und Verordnungsblatt S. 335), last amended by Sec. 18 of the Second Act to Revise Land Law and to Adapt Provisions on Penal and Administrative Fines to Federal Law of 24 July 1974 (Bayerisches Gesetz- und Verordnungsblatt S. 354);

#### Berlin

17. the General Mining Act of 24 June 1865 (Gesetz- und Verordnungsblatt für Berlin, Sonderband I 7501), last amended by the Act to Amend the General Mining Act of 5 February 1980 (Gesetz- und Verordnungsblatt für Berlin p. 406);
18. the Act to Amend the General Mining Act of 18 June 1907 (Gesetz- und Verordnungsblatt für Berlin, Sonderband I 750-1-1);

#### Bremen

19. the General Mining Act for the Prussian States of 24 June 1865 (Sammlung des bremischen Rechts 751-c-2), last amended by Sec. 60 no. 53 of the Law on Attestations of 28 August 1969 (Federal Law Gazette I, p. 1513);
20. the Law on Monitoring Underground Mineral Extraction Operations, Deep Storage Sites and Deep Well Drilling of 18 December 1933 (Sammlung des bremischen Rechts 751-c-3), last amended by the Law to Amend the Law on Monitoring Underground Mineral Extraction Operations and Deep Well Drilling of 14 October 1969 (Gesetzblatt der Freien Hansestadt Bremen p. 131);
21. the Act on Drilling for Oil and Other Mineral Resources (Oil Act) of 12 May 1934 (Sammlung des bremischen Rechts 751-c-4);
22. the Phosphorite Act of 16 October 1934 (Sammlung des bremischen Rechts 751-c-5);
23. the Ordinance on Permission for Exploration and Extraction of Oil and Other Mineral Resources (Oil Ordinance) of 13 December 1934 (Sammlung des bremischen Rechts 751-c-6);
24. the Ordinance on Police Monitoring by Mining Officials of Mining Facilities for Incidental Extraction and Treatment of 22 January 1938 (Sammlung des bremischen Rechts 751-c-7);
25. the Ordinance on Mining Law in Bremen of 15 July 1941 (Sammlung des bremischen Rechts 751-c-1);
26. the Notification of the Oberbergamt for the Free Hanseatic City of Bremen of 20 August 1949 (Sammlung des bremischen Rechts 751-b-1);

#### Hamburg

27. the General Mining Act of 24 June 1865 (Sammlung des bereinigten hamburgischen Landesrechts II 750-m), last amended by Article 37 of the Act to Adapt Hamburg Land Law to the Second Act to Reform the Criminal Code and the Introductory Act of the

Criminal Code of 9 December 1974 (Hamburgisches Gesetz- und Verordnungsblatt I p. 381);

28. the Law on Monitoring Underground Mineral Extraction Operations, Deep Storage Sites and Deep Well Drilling of 18 December 1933 (Sammlung des bereinigten hamburgischen Landesrechts II 750- o), last amended by Article 38 of the Act to Adapt Hamburg Land Law to the Second Act to Reform the Criminal Code and the Introductory Act of the Criminal Code of 9 December 1974 (Hamburgisches Gesetz- und Verordnungsblatt I p. 381);

29. the Act on Drilling for Oil and Other Mineral Resources (Oil Act) of 12 May 1934 (Sammlung des bereinigten hamburgischen Landesrechts II 750-p);

30. the Phosphorite Act of 16 October 1934 (Sammlung des bereinigten hamburgischen Landesrechts II 750-q);

31. the Ordinance on Permission for Exploration and Extraction of Oil and Other Mineral Resources (Oil Ordinance) of 13 December 1934 (Sammlung des bereinigten hamburgischen Landesrechts II 750-q-1);

32. the Ordinance on Mining Law in Greater Hamburg of 25 March 1937 (Sammlung des bereinigten hamburgischen Landesrechts II 750-r);

33. the Third Ordinance on Mining Law in Greater Hamburg of 7 December 1938 (Sammlung des bereinigten hamburgischen Landesrechts II 750-s);

#### Hessen

34. the General Mining Act for Land Hesse as published on 10 November 1969 (Gesetz- und Verordnungsblatt für das Land Hessen I p. 223), last amended by Article 53 of the Hessian Act to Adapt Land Law to the Introductory Act of the Criminal Code (EGStGB) and the Second Act to Reform the Criminal Code (2. StrRG) of 4 September 1974 (Gesetz- und Verordnungsblatt für das Land Hessen I p. 361);

35. the Ordinance to Establish the General Mining Act of 24 June 1865 in the territory of the former Duchy of Nassau of 22 February 1867 (Gesetz-Sammlung für die Königlichen Preußischen Staaten p. 237), last amended by Article 27 No. 2 of the Hessian Act to Adapt Land Law to the First Act to Reform the Criminal Code of 18 March 1970 (Gesetz- und Verordnungsblatt für das Land Hessen I p. 245);

36. the Ordinance to Establish the General Mining Act of 24 June 1865 in the parts of the province of Oberhessen of the Grand Duchy of Hesse united with the Prussian Monarchy, as well as in the territory of the former Landgraviate Hessen-Homburg, including the Higher Administrative District of Meisenheim of 22 February 1867 (Gesetz-Sammlung für die Königlichen Preußischen Staaten p. 242), last amended by Article 27 No. 3 of the Hessian Act to Adapt Land Law to the First Act to Reform the Criminal Code of 18 March 1970 (Gesetz- und Verordnungsblatt für das Land Hessen I p. 245);

37. the Ordinance to Establish the General Mining Act of 24 June 1865 in the territory of the former Electorate Hessen and the former free city of Frankfurt as well as of parts of the former Kingdom of Bavaria that were united with the Prussian Monarchy of 1 June 1867 (Gesetz-Sammlung für die Königlichen Preußischen Staaten p. 770), last amended by Article 27 No. 4 of the Hessian Act to Adapt Land Law to the First Act to Reform the Criminal Code of 18 March 1970 (Gesetz- und Verordnungsblatt für das Land Hessen I p. 245);

38. the Act to Establish the Prussian General Mining Act of 24 June 1865 in the Duchies Waldeck and Pyrmont of 1 January 1869 (Fürstlich Waldeckisches Regierungsblatt p. 3),

last amended by Section 1 of the Act to Revise Hessian Land law of 6 February 1962 (Gesetz- und Verordnungsblatt für das Land Hessen p. 21);

39. the Act on Mines Operated by Foreign Legal Persons and Activities of Non-Prussian Trade Unions of 23 June 1909 (Preußische Gesetz-Sammlung p. 619), last amended by Sec. 1 of the Act to Revise Hessian Land law of 6 February 1962 (Gesetz- und Verordnungsblatt für das Land Hessen p. 21);

40. the Law on Monitoring Underground Mineral Extraction Operations, Deep Storage Sites and Deep Well Drilling as published on 9 August 1968 (Gesetz- und Verordnungsblatt für das Land Hessen I p. 251), last amended by Article 54 of the Hessian Act to Adapt Provisions on Penal and Administrative Fines to the Regulatory Offences Act (OWiG) and the Introductory Act to the Act on Regulatory Offences (EGOWiG) of 5 October 1970 (Gesetz- und Verordnungsblatt für das Land Hessen I p. 598);

41. the Act on Drilling for Oil and Other Mineral Resources (Oil Act) of 12 May 1934 as published on 1 April 1953 (Gesetz- und Verordnungsblatt für das Land Hessen S. 89), last amended by Article 55 of the Hessian Act to Adapt Provisions on Penal and Administrative Fines to the Regulatory Offences Act (OWiG) and the Introductory Act to the Act on Regulatory Offences (EGOWiG) of 5 October 1970 (Gesetz- und Verordnungsblatt für das Land Hessen I p. 598);

42. the Phosphorite Act of 16 October 1934 as published on 1 April 1953 (Gesetz- und Verordnungsblatt für das Land Hessen p. 90), last amended by Article 56 of the Hessian Act to Adapt Provisions on Penal and Administrative Fines to the Regulatory Offences Act (OWiG) and the Introductory Act to the Act on Regulatory Offences (EGOWiG) of 5 October 1970 (Gesetz- und Verordnungsblatt für das Land Hessen I p. 598);

43. the Ordinance on Permission for Exploration and Extraction of Oil and Other Mineral Resources (Oil Ordinance) of 13 December 1934 as published on 1 April 1953 (Gesetz- und Verordnungsblatt für das Land Hessen p. 91), last amended by Sec. 1 of the Act to Revise Hessian Land Law of 6 February 1962 (Gesetz- und Verordnungsblatt für das Land Hessen p. 21);

44. the Ordinance on Police Monitoring by Mining Officials of Mining Facilities for Incidental Extraction and Treatment of 22 January 1938 (Preußische Gesetzsammlung S. 19), last amended by Sec. 1 of the Act to Revise Hessian Land Law of 6 February 1962 (Gesetz- und Verordnungsblatt für das Land Hessen p. 21);

45. the Act on Mining Law in Land Hesse of 6 July 1952 (Gesetz- und Verordnungsblatt für das Land Hessen p. 130), last amended by Section 10 No. 4 of the Act on Promulgation of Ordinances, Organisational Orders and Company Rules of 2 November 1971 (Gesetz- und Verordnungsblatt für das Land Hessen I p. 258);

#### Lower Saxony

46. the Act to Amend and Revise Mining Law in Land Lower Saxony of 10 March 1978 (Niedersächsisches Gesetz- und Verordnungsblatt p. 253);

47. the General Mining Law for Land Lower Saxony in the version of the Appendix to the Act to Amend and Revise Mining Law in Land Lower Saxony of 10 March 1978 (Niedersächsisches Gesetz- und Verordnungsblatt p. 253);

48. the Ordinance to Establish the General Mining Act of 24 June 1865 in the territory of the former Kingdom of Hannover of 8 May 1867 (Niedersächsisches Gesetz- und Verordnungsblatt, Sammelband III p. 307), last amended by Article IV of the Act to

Amend and Revise Mining Law in Land Lower Saxony of 10 March 1978  
(Niedersächsisches Gesetz- und Verordnungsblatt p. 253);

49. the Ordinance to Establish the General Mining Act of 24 June 1865 in the territory united with the Prussian Monarchy of the former Electorate Hessen and the former free city of Frankfurt as well as of parts of the former Kingdom of Bavaria of 1 June 1867  
(Niedersächsisches Gesetz- und Verordnungsblatt, Sammelband III p. 308);

50. the Act on Grant of Salt Mining Rights in the Province of Hannover of 4 August 1904  
(Niedersächsisches Gesetz- und Verordnungsblatt, Sammelband III p. 359);

51. the Act to Amend the General Mining Act of 24 June 1865 of 18 June 1907  
(Niedersächsisches Gesetz- und Verordnungsblatt, Sammelband III p. 308);

52. the Act on Mines Operated by Foreign Legal Persons and Activities of Non-Prussian Trade Unions of 23 June 1909 (Niedersächsisches Gesetz- und Verordnungsblatt, Sammelband III p. 309);

53. the Act on Assigning Lignite Fields to the Government in the Province of Hannover of 3 January 1924 (Niedersächsisches Gesetz- und Verordnungsblatt, Sammelband III p. 701);

54. the Phosphorite Act of 16 October 1934 (Niedersächsisches Gesetz- und Verordnungsblatt, Sammelband II p. 702), last amended by Article 56 of the Act to Adapt Land Law to the First Act on the Reform of the Criminal Code, to the Act on Regulatory Offences and to the Introductory Act to the Act on Regulatory Offences (First Adaptation Act) of 24 June 1970 (Niedersächsisches Gesetz- und Verordnungsblatt p. 237);

55. the Ordinance on Permission for Exploration and Extraction of Oil and Other Mineral Resources (Oil Ordinance) of 13 December 1934 (Niedersächsisches Gesetz- und Verordnungsblatt, Sammelband II p. 709);

56. the Ordinance on Police Monitoring by Mining Officials of Mining Facilities for Incidental Extraction and Treatment of 22 January 1938 (Niedersächsisches Gesetz- und Verordnungsblatt, Sammelband III p. 703), last amended by Article III of the Act to Amend and Revise Mining Law in Land Lower Saxony of 10 March 1978  
(Niedersächsisches Gesetz- und Verordnungsblatt p. 253);

57. the Ordinance on Salts and Saline Springs in the Holzminden District (Administrative District of Hildesheim) of 4 January 1943 (Niedersächsisches Gesetz- und Verordnungsblatt, Sammelband II p. 710);

#### North-Rhine/Westphalia

58. the General Mining Act of 24 June 1865 (Sammlung des in Nordrhein-Westfalen geltenden preußischen Rechts p. 164), last amended by Article XXXIII of the Second Act to Adapt Provisions on Penal and Administrative Fines to Federal Law of 3 December 1974 (Gesetz- und Verordnungsblatt für das Land Nordrhein-Westfalen p. 1504);

59. the Act to Amend the General Mining Act of 24 June 1865 of 18 June 1907  
(Sammlung des in Nordrhein-Westfalen geltenden preußischen Rechts p. 185);

60. the Act on Mines Operated by Foreign Legal Persons and Activities of Non-Prussian Trade Unions of 23 June 1909 (Sammlung des in Nordrhein-Westfalen geltenden preußischen Rechts p. 185);

61. the Law on Monitoring Underground Mineral Extraction Operations and Deep Well Drilling of 18 December 1933 (Sammlung des in Nordrhein-Westfalen geltenden preußischen Rechts p. 189), last amended by the Law to Amend the Law on Monitoring

Underground Mineral Extraction Operations and Deep Well Drilling of 15 October 1974 (Gesetz- und Verordnungsblatt für das Land Nordrhein-Westfalen p. 1048);

62. the Act on Drilling for Oil and Other Mineral Resources (Oil Act) of 12 May 1934 (Sammlung des in Nordrhein-Westfalen geltenden preußischen Rechts p. 189), last amended by Article III of the Fourth Act to Amend Mining Law Provisions in Land North Rhine-Westphalia of 11 June 1968 (Gesetz- und Verordnungsblatt für das Land Nordrhein-Westfalen p. 201);

63. the Phosphorite Act of 16 October 1934 (Sammlung des in Nordrhein-Westfalen geltenden preußischen Rechts p. 190), last amended by Article II of the Fourth Act to Amend Mining Law Provisions in Land North Rhine-Westphalia of 11 June 1968 (Gesetz- und Verordnungsblatt für das Land Nordrhein-Westfalen p. 201);

64. the Ordinance on Permission for Exploration and Extraction of Oil and Other Mineral Resources (Oil Ordinance) of 13 December 1934 (Sammlung des in Nordrhein-Westfalen geltenden preußischen Rechts p. 191);

65. the Ordinance on Police Monitoring by Mining Officials of Mining Facilities for Incidental Extraction and Treatment of 22 January 1938 (Sammlung des in Nordrhein-Westfalen geltenden preußischen Rechts p. 192), last amended by the Third Ordinance to Amend the Ordinance on Police Monitoring by Mining Officials of Mining Facilities for Incidental Extraction and Treatment of 7 September 1977 (Gesetz- und Verordnungsblatt für das Land Nordrhein-Westfalen p. 346);

66. the Second Act to Amend Mining Law Provisions in Land North Rhine-Westphalia of 25 May 1954 (Sammlung des bereinigten Landesrechts Nordrhein-Westfalen p. 694);

67. the Ordinance on Supervision by Mining Authorities of Deep Drilling of 1 April 1958 (Gesetz- und Verordnungsblatt für das Land Nordrhein-Westfalen p. 135);

#### Rhineland-Palatinate

68. the General Mining Act for Land Rhineland-Palatinate (ABGRhPf) as published on 12 February 1974 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz p. 113), amended by Article 41 of the Third Land Law to Amend Provisions of the Criminal Code (3. LStrafÄndG) of 5 November 1974 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz p. 469);

69. the Act on Punishing Unauthorized Extraction or Acquisition of Minerals of 26 March 1856 as published on 27 November 1968 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz 1968, Sondernummer Koblenz, Trier, Montabaur p. 78), last amended by Article 67 of the Third Land Law to Amend Provisions of the Criminal Code of 5 November 1974 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz p. 469);

70. the Ordinance to Establish the General Mining Act of 24 June 1865 in the territory of the former Duchy of Nassau (for the administrative district Montabaur) of 22 February 1867 as published on 27 November 1968 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz 1968, Sondernummer Koblenz, Trier, Montabaur p. 113);

71. the Ordinance to Establish the General Mining Act of 24 June 1865 in the parts of the province of Oberhessen of the Grand Duchy of Hesse united with the Prussian Monarchy and in the territory of the former Landgraviate Hessen-Homburg, including the Larger Administrative District Meisenheim of 22 February 1867 as published on 27 November 1968 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz 1968, Sondernummer Koblenz, Trier, Montabaur p. 113);

72. the Act to Amend the Mining Act of 24 June 1865 in the territory of the former Duchy of Nassau (for the administrative districts of Koblenz, Trier and Montabaur) of 18 June

1907 as published on 27 November 1968 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz 1968, Sondernummer Koblenz, Trier, Montabaur p. 114);

73. the Act on Mines Operated by Foreign Legal Persons and Activities of Non-Prussian Trade Unions (for the administrative districts of Koblenz, Trier and Montabaur) of 23 June 1909 as published on 27 November 1968 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz 1968, Sondernummer Koblenz, Trier, Montabaur p. 114);

74. the Law on Monitoring Underground Mineral Extraction Operations and Deep Well Drilling of 18 December 1933 as published on 27 November 1968 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz 1968, Sondernummer Koblenz, Trier, Montabaur p. 118), last amended by Article 2 of the Land Law on Mining Rights in Land Rhineland-Palatinate of 3 January 1974 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz p. 1);

75. the Act on Drilling for Oil and Other Mineral Resources (Oil Act) of 12 May 1934 as published on 27 November 1968 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz 1968, Sondernummer Koblenz, Trier, Montabaur p. 119), last amended by Article 3 of the Land Law on Mining Rights in Land Rhineland-Palatinate of 3 January 1974 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz p. 1);

76. the Ordinance on Rights to Exploration and extraction of Oil and Other Mineral Resources (Oil Act) of 13 December 1934 as published on 27 November 1968 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz 1968, Sondernummer Koblenz, Trier, Montabaur p. 120), last amended by Article 5 of the Land Law on Mining Rights in Land Rhineland-Palatinate of 3 January 1974 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz p. 1);

77. the Phosphorite Act of 16 October 1934 as published on 27 November 1968 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz 1968, Sondernummer Koblenz, Trier, Montabaur p. 121), last amended by Article 4 of the Land Law on Mining Rights in Land Rhineland-Palatinate of 3 January 1974 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz p. 1);

78. the Law on Police Monitoring By Mining Officials of Mining Facilities for Incidental Extraction and Treatment of 22 January 1938 as published on 27 November 1968 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz 1968, Sondernummer Koblenz, Trier, Montabaur p. 122), last amended by Article 5 of the Land Law on Mining Rights in Land Rhineland-Palatinate of 3 January 1974 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz p. 1);

79. the Land Ordinance on Supervision by Mining Authorities of Deep Drilling of 29 July 1976 (Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz p. 215);

#### Saarland

80. the Basic Mining Act for the Prussian States of 24 June 1865 (Gesetz-Sammlung für die Königlichen Preußischen Staaten p. 705), last amended by Article 36 of the Second Act to Amend and Revise Provisions on Penal and Administrative Fines in Saarland of 13 November 1974 (Amtsblatt des Saarlandes p. 1011);

81. the Act on Punishing Unauthorized Extraction or Acquisition of Minerals of 26 March 1856 (Gesetz-Sammlung für die Königlichen Preußischen Staaten p. 203), last amended by Article 37 of the Second Act to Amend and Revise Provisions on Penal and Administrative Fines in Saarland of 13 November 1974 (Amtsblatt des Saarlandes p. 1011);

82. the Act to Amend the General Mining Act of 24 June 1865 of 18 June 1907 (Preußische Gesetzsammlung p. 119), amended by Sec. 8 No. 2 of the Act to Transfer Private Mining Rights and Authority to Grant Rights to the Government of 29 December 1942 (Preußische Gesetzsammlung 1943 p. 1);

83. the Act on Mines Operated by Foreign Legal Persons and Activities of Non-Prussian Trade Unions of 23 June 1909 (Preußische Gesetzsammlung p. 619);

84. the Law on Monitoring Underground Mineral Extraction Operations and Deep Well Drilling of 18 December 1933 (Preußische Gesetzsammlung p. 493), last amended by Article 39 of Law No. 907 to Amend and Revise Provisions on Penal and Administrative Fines and to Adapt Saarland Laws to the First Act to Reform the Criminal Code of 13 March 1970 (Amtsblatt des Saarlandes p. 267);

85. the Act on Extraction of Oil and other Mineral Resources (Oil Act) of 12 May 1934 (Preußische Gesetzsammlung p. 257), last amended by Sec. 15 Act to Amend Mining Provisions of 24 September 1937 (Preußische Gesetzsammlung p. 93);

86. The Phosphorite Act of 16 October 1934 (Preußische Gesetzsammlung p. 404), last amended by Sec. 16 of the Act to Amend Mining Provisions of 24 September 1937 (Preußische Gesetzsammlung p. 93);

87. the Ordinance on Permission for Exploration and Extraction of Oil and Other Mineral Resources (Oil Ordinance) of 13 December 1934 (Preußische Gesetzsammlung p. 463), last amended by Sec. 17 of the Act to Amend Mining Provisions of 24 September 1937 (Preußische Gesetzsammlung p. 93);

88. the Act to Amend Mining Provisions of 24 September 1937 (Preußische Gesetzsammlung p. 93);

89. the Ordinance on Police Supervision by Mining Officials of Mining Facilities for Incidental Extraction and Treatment of 22 January 1938 (Preußische Gesetzsammlung p. 19); as amended by the ordinance of 29 April 1980 (Amtsblatt des Saarlandes p. 549);

90. the Act on Permission for Exploration and Extraction of Iron Ore and Manganese Ore of 10 July 1953 (Amtsblatt des Saarlandes S. 533), last amended by the Act to Amend the Act on Permission for Exploration and Extraction of Iron Ore and Manganese Ore (Amtsblatt des Saarlandes p. 1657);

#### Schleswig-Holstein

91. the Basic Mining Act for the Prussian States of 24 June 1865 (Sammlung des schleswig-holsteinischen Landesrechts 1971, Gl.-Nr. 750-1), last amended by Article 45 of the Act to Adapt the Land Law of Schleswig-Holstein to the Second Act to Reform the Criminal Code and other Federal Provisions on Penal and Administrative Fines of 9 December 1974 (Gesetz- und Verordnungsblatt für Schleswig-Holstein p. 453);

92. the Act to Establish the General Mining Act for the Prussian States of 24 June 1865 in the territory of the Duchy of Lauenburg of 6 May 1868 (Sammlung des schleswig-holsteinischen Landesrechts 1971, Gl.-Nr. 750-2);

93. the Act to Establish the General Mining Act of 24 June 1865 in the territory of the Duchies of Schleswig and Holstein of 12 March 1869 (Sammlung des schleswig-holsteinischen Landesrechts 1971, Gl.-Nr. 750-3);

94. the Act to Amend the General Mining Act of 24 June 1865 of 18 June 1907 (Sammlung des schleswig-holsteinischen Landesrechts 1971, Gl.-Nr. 750-4);

95. the Law on Monitoring Underground Mineral Extraction Operations, Deep Storage Sites and Deep Well Drilling of 18 December 1933 (Sammlung des schleswig-

holsteinischen Landesrechts 1971, Gl.- Nr. 750-5), last amended by Article 46 of the Act to Adapt the Land Law of Schleswig-Holstein to the Second Act to Reform the Criminal Code and other Federal Provisions on Penal and Administrative Fines of 9 December 1974 (Gesetz- und Verordnungsblatt für Schleswig-Holstein p. 453);

96. the Act on Drilling for Oil and Other Mineral Resources (Oil Act) of 12 May 1934 (Sammlung des schleswig-holsteinischen Landesrechts 1971, Gl.-Nr. 750-6);

97. the Phosphorite Act of 16 October 1934 (Sammlung des schleswig-holsteinischen Landesrechts 1971, Gl.-Nr. 750-7);

98. the Ordinance on Permission for Exploration and Extraction of Oil and Other Mineral Resources (Oil Ordinance) of 13 December 1934 (Sammlung des schleswig-holsteinischen Landesrechts 1971, Gl.-Nr. 750-7-1);

99. the Ordinance on Police Monitoring by Mining Officials of Mining Facilities for Incidental Extraction and Treatment of 22 January 1938 (Sammlung des schleswig-holsteinischen Landesrechts 1971, Gl.-Nr. 750-1-1).

(2) The provisions of Land law on administration of mining rights in the land registry, including provisions on establishing and maintaining mining registries, shall remain unaffected, to the extent that they are not included in the acts and ordinances listed under (1). The Länder may also issue new provisions in the area specified in sentence 1 and revoke or amend existing provisions.

(3) Ordinances (mining ordinances or police ordinances for mining) that were entirely or partially issued prior to entry into force of this Act and were based on the provisions revoked pursuant to (1) and the accompanying statutory provisions on administrative fines, shall remain in force unless the subject of these provisions are provided for in this Act or they contradict the provisions of this Act. The Land governments or the authorities they appoint pursuant to Section 68 (1) shall be authorised to issue ordinances to revoke the provisions applicable in their respective Land that were maintained pursuant to sentence 1, to the extent that they issue mining ordinances regulating the subjects therein based on Section 68 (1). The Federal Ministry for Economic Affairs and Energy shall be authorised to revoke the provisions maintained in accordance with sentence 1 by issuing ordinances with the consent of the Bundesrat, if mining ordinances are issued pursuant to Section 68 (2) regarding subjects of the revoked provisions.

(4) Whenever federal statutes and ordinances refer to the provisions that expired pursuant to (1) or Section 175, the corresponding provisions of this Act shall be substituted for them.

#### **Section 177 (repealed)**

#### **Section 178 Entry into force**

This Act shall enter into force on 1 January 1982. In departure from this, Sections 32, 65 to 68, 122 (4), Sections 123, 125 (4), Section 129 (2), Section 131 (2), Sections 141 and 176 (3) sentences 2 and 3 shall enter into force on the day after promulgation of the Act.

#### **Appendix**

#### **EV Excerpt from the Treaty between the Federal Republic of Germany and the German Democratic Republic on the Establishment of German Unity Appendix I Chapter V Subject area D Section III (Federal Law Gazette II 1990, 889, 1003) Measures for the acceded area (Art. 3 of the Unification Treaty)**

##### **Section III**

Federal law shall enter into force in the territory specified in Article 3 of the Treaty, with the following stipulations: Federal Mining Act of 13 August 1980 (Federal Law Gazette I p.



1310), last amended by the Act of 12 February 1990 (Federal Law Gazette I p. 215), with the following stipulations:

a) (repealed)

b) Exploration, extraction and storage rights of the government as provided for in Section 5 (2) to (4) of the Mining Act of the German Democratic Republic that have been assigned to third parties to exercise (old rights) shall be maintained in accordance with letters c) to g). Unless otherwise provided for, the exploration, extraction and storage rights of the government as provided for in Section 5 of the Mining Act of the German Democratic Republic shall expire.

c) Exploration rights shall expire twelve months after the effective date of the accession. Section 14 (1) shall apply to grant of an exploration licence with the stipulation that the holder of an exploration licence shall be substituted by the beneficiary of permission to mine a prospective deposit area that was determined on the basis of the Deposit Management Regulation of 15 March 1971 (GBl. II no. 34 p. 279).

d) (1) to (3) (repealed)

(4) An upheld extraction licence shall apply to the resources, the time period and the area for which it is upheld,

1. as an extraction licence as provided for in Section 8 in the cases specified in (2) nos. 1.1. and 1.2. first and third indent,

2. as a mining proprietorship as provided for in Section 151 in the cases specified in (2) no. 1.2. second indent.

(5) Sections 75 and 76 shall apply mutatis mutandis to upheld old rights.

(6) Rights that are not notified or not notified on time shall expire at the end of a specified period. Rights that are not upheld shall expire with when denial becomes final and binding.

(7) Obligations under mining law arising from an extraction licence exercised up to the day accession becomes effective shall remain unaffected by an upheld right that does not completely cover the previous extraction right. If legal succession relating to mining obligations is disputed, the authority with competence to uphold rights shall determine responsibility. The successors in title shall provide the information required.

e) Letter d) shall apply to extraction rights for other mineral resources, with the following stipulations:

aa) and bb) (repealed)

cc) Assignment of the extraction licence (Section 22) shall require the consent of the property owner. It shall not be permitted to grant mining proprietorships. Section 31 shall not apply.

f) Section 126 shall apply to testing of the subsoil and to underground storage sites with the stipulation that the provisions of Sections 107 to 125 shall apply mutatis mutandis.

g) Section 153 sentences 2 and 3 and Sections 159 and 160 shall apply to upheld old rights mutatis mutandis.

h) Sections 50 to 62 and Section 169 shall apply mutatis mutandis, with the following stipulations:

aa) Technical operating plans that had already been approved prior to the effective date of accession in accordance with the Mining Act of the German Democratic Republic and with regulations issued in accordance with this Act shall be deemed approved as provided for in Sections 50 to 56 for the duration of their term, at the latest however until 31 December 1991, unless provided for otherwise in the following provisions. Technical operating plans with a duration of up to 31 December 1990 at the latest may be extended to 31 December 1991 at the latest for continuation of projects with no substantial alterations planned in accordance with laws in effect up to the effective date of accession. Technical operational plans for closure of operations that is either current or planned at the accession effective date and that had been approved prior to 1 October 1990 shall be submitted within a period of four months after the effective date of accession to the competent authority for approval as closure plans; Section 169 (1) no. 2 sentence 2 shall apply mutatis mutandis. Section 169 (1) nos. 1 and 2 shall apply mutatis mutandis to activities and facilities as provided for in Sections 2, 126 to 129 and 131 for which an operating plan is required only as of the effective date of accession. Section 169 (2) sentence 2 shall not apply. In any case, proof of rights as provided for in Section 55 (1) sentence 1 shall be produced without delay after a decision on confirmation of rights, and regarding exploration licences within twelve months after the effective date of accession.

bb) Section 52 (2a) shall not apply to operations for which proceedings for approval of operations, in particular approval of technical operating plans, had already been initiated on the effective date of accession.

cc) (repealed)

i) Designated mining areas as provided for in Section 11 of the Mining Act of the German Democratic Republic which the authority responsible for approval of operating plans expects to be used for mining within the next 15 years shall be deemed land-use restricted areas as provided for in Sections 107 to 109 for the area of the field for which the extraction licence has been upheld with the stipulation that Section 107 (4) shall apply, regardless of the requirements for determination of areas reserved for mining, however not until 1 January 1995, unless the entrepreneur benefiting from the land-use restriction applies for earlier removal of the restrictions. In all other respects, designated mining areas shall be deemed revoked on the effective date of accession. The registry of designated mining areas deemed land-use restricted areas as provided for in sentence 1 shall be deemed secure storage in an archive as provided for in Section 107 (2).

k) Section 112 shall apply with the stipulation that not executing or not properly executing measures as provided for in Sections 110 or 111 shall be deemed a violation, if these measures were stipulated prior to the effective date of accession by mining evaluations required from the building contractor under the Mining Act of the German Democratic Republic and the regulations based on this Act. Sections 114 to 124 shall apply with the stipulation that liability under these provisions shall only apply to damage caused exclusively at or after the effective date of accession. In all other cases the provisions of the German Democratic Republic applicable to this type of damage prior to the effective date of accession shall apply. The planning procedure phases described in Section 124 (2) shall be substituted by the corresponding planning procedure phases pursuant to the laws of the German Democratic Republic that continue in force, unless the law of the area in which the Federal Mining Act was already in effect prior to accession is extended to the area specified in Article 3 of the Treaty.

l) To the extent that in all other cases reference is made to provisions that are not extended to the area specified in Article 3 of the Treaty, they shall be substituted by the

corresponding provisions of the law of the German Democratic Republic continuing in force.

m) The Federal Minister for Economic Affairs and Energy shall be authorized to issue regulations with the consent of the Bundesrat stipulating

aa) a different classification of the mineral resources specified in letter a), to the extent required by other or undetermined criteria regarding Section 3 (3) and (4),

bb) an extension of the deadlines required by this Act by six months at the most, if this facilitates the required adaptation,

cc) details on maintaining and upholding old rights as provided for in letter b), as well as on the designated mining areas deemed land-use restricted areas as provided for in letter i and their revocation.