

Act Regulating Seabed Mining (Seabed Mining Act – MbergG)

Seabed Mining Act of 6 June 1995 (Federal Law Gazette I, p. 778, 782), most recently amended by Article 74 of the Act of 8 December 2010 (Federal Law Gazette I, p. 1864)

Section 1 Purpose of the Act

(1) The purpose of this Act is

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

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

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

Section 2 Definitions

Within the meaning of this Act

1. Convention:

shall be the United Nations Convention on the Law of the Sea of 10 December 1982 including its Annexes;

2. Implementing Agreement:

shall be the Agreement of 29 July 1994 relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982;

3. Area:

shall be the seabed and the subsoil beyond the limits of national jurisdiction;

4. resources:

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

5. activities in the Area:

shall be all activities to explore and exploit the resources of the Area;

6. Authority:

shall be the International Seabed Authority;

7. Landesamt:

shall be the Landesamt für Bergbau, Energie und Geologie, LBEG (State Office for Mining, Energy and Geology) in Hanover and Clausthal-Zellerfeld;

8. rules and regulations:

shall be the rules, provisions and procedures enacted by the Authority pursuant to Article 160 (2) f ii and Article 162 (2) o ii of the Convention and Article 17 of its Annex III and Figure 15 of Section 1 of the Annex to the Implementing Agreement;

9. prospector:

shall be any natural or legal person or commercial partnership which possesses German nationality or has been founded under German law, is subject to the control of the German authorities and prospects in the Area;

10. applicant:

shall be any natural or legal person or commercial partnership which applies for the confirmation of a plan of work for activities in the Area, which possesses German nationality or has been founded under German law, and is subject to the control of the German authorities;

11. contractor:

each applicant which has been approved by the Oberbergamt and which has concluded a contract on activities in the Area with the Authority;

12. contract:

each contract concluded between the Authority and a contractor on activities in the Area including the confirmed plan of work.

Section 3 Implementation by the Landesamt

This Act shall be implemented by the Landesamt für Bergbau, Energie und Geologie, LBEG in Hanover and Clausthal-Zellerfeld as an agency of the Federation loaned for this task by the State of Lower Saxony. To this extent, the Landesamt shall be subject to the material and legal supervision of the Federation.

Section 4 Conditions for access

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

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

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

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

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

(6) An applicant shall be approved if

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

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

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

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

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

(11) The approval shall not be transferable.

Section 5 Responsibility

Prospectors and contractors shall be responsible for

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

Section 6 – Persons responsible

(1) Prospectors and contractors shall be required

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

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

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

Section 7 Authorisation to enact ordinances

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

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

Section 8 Mining supervision

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

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

(3) The persons commissioned by the Landesamt as supervisors (supervisors) are authorised

1. to enter operational facilities, business rooms, establishments and airborne and waterborne vehicles of the party required to furnish information and to undertake examinations there,
2. to seize objects where this is necessary to examine causes of accidents.

The supervisors may enter operational facilities, business and operational rooms and airborne and waterborne vehicles used for prospecting or activities in the Area, both within and outside normal business and operational hours, and rooms which serve residential purposes only in order

to prevent imminent danger to public safety and order; to this extent, the fundamental right of the inviolability of the home (Article 13 of the Basic Law) is restricted.

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

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

Section 9 Archaeological and historic objects

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

Section 10 Costs

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

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

Section 11 Fines

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

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

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

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

Section 12 – Penal provisions

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

(2) Anyone who

1. causes the danger by negligence or
2. acts recklessly and causes the danger by negligence shall be liable to imprisonment of up to two years or a fine.

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

Section 13 Transitional arrangements

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

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

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

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

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