

# „ROLE OF SPONSORING STATES“

ISA-CIL Workshop, Singapore, 12-13 April 2019

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## Outline



Legal framework

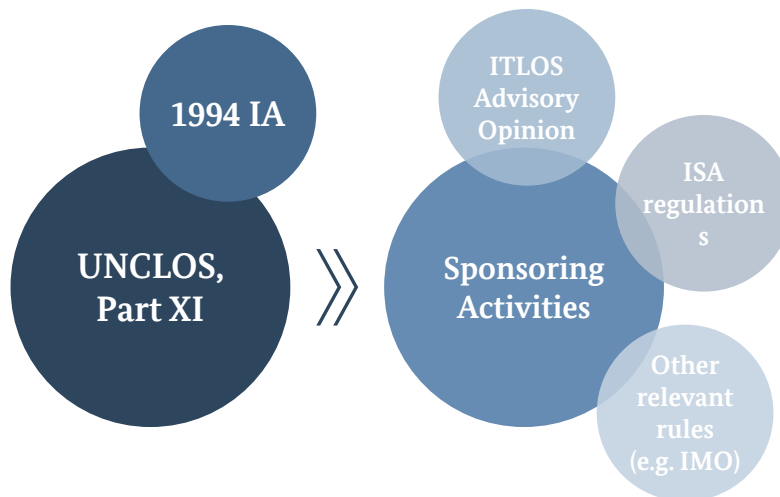


Role of sponsoring States



Challenges ahead

## I. Legal framework



## I. Legal framework: ITLOS Advisory Opinion

Two distinct obligations:

- The responsibility to ensure compliance by sponsored contractors with the terms of the contract and the obligations set out in the Convention and related instruments (“obligation of conduct”; “obligation of due diligence”)
- A direct obligation with which sponsoring States must comply independently of their obligation to ensure a certain conduct on the part of the sponsored contractors

## I. Legal framework: UNCLOS

- Art. 139 UNCLOS
- Art. 150 UNCLOS
- Art. 153 UNCLOS
- Annex III, Art. 4 to UNCLOS

## Outline



Legal framework



Role of sponsoring States



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## II. Role of sponsoring States

Different types of obligations for sponsoring States:

1. Obligations of sponsoring States vs. contractors
2. Obligations of sponsoring States vs. ISA
3. Obligations of sponsoring States directly (independent of others)

### II.1 Obligations: sponsoring States vs. contractors

Sponsoring States have to ensure compliance by sponsored contractors with relevant rules and provisions:

- Obligations for contractors have to be established
- Compliance with obligations has to be monitored and controlled
- Instances of non-compliance have to be sanctioned

## II.1 Role of sponsoring States: a glimpse into the German system (1)

Federal Seabed Mining Act („**Meeresbodenbergbaugesetz**“) of 6 June 1995  
+ several supplementing ordinances on the rules and regulations on prospecting, exploration of resources in the Area

Competent authority acting on behalf of the Federal Government:



State Authority for Mining, Energy and Geology (LBEG)



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## II.1 Role of sponsoring States: a glimpse into the German system (2)

### Obligations for contractors have to be established

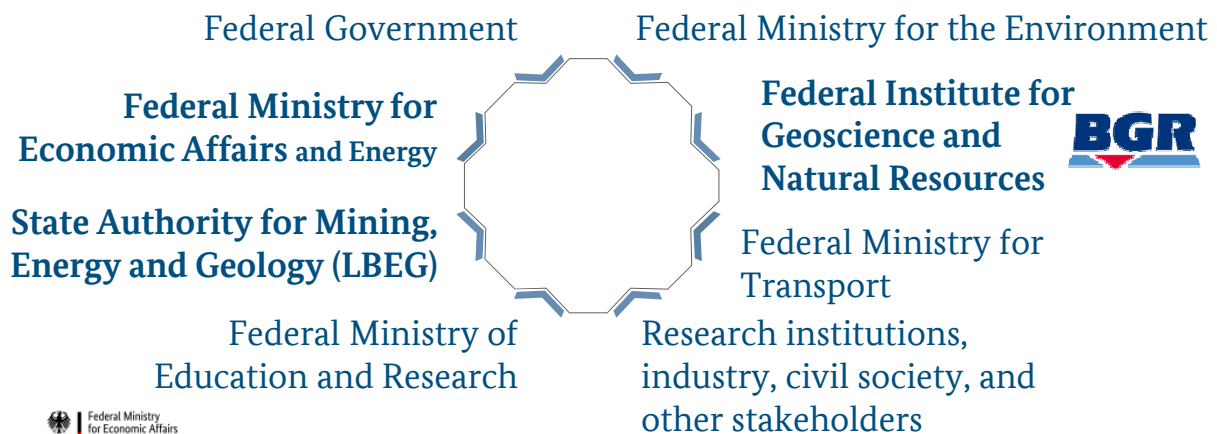
- Activities by contractors in the Area require prior sponsorship by LBEG
- Sponsorship by LBEG is granted, if
  - Application documents and draft plan of work meet the requirements of the Convention, the Implementing Agreement, the rules and regulations issued by the Authority as well as the obligations pursuant to Article 4 (6) letters a to c of Annex III to the Convention
  - Various other requirements are satisfied (including reliability, credit rating)

**Sec. 4 MBergG**



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## II.1 Role of sponsoring States: a glimpse into the German system (3)



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## II.1 Role of sponsoring States: a glimpse into the German system (4)

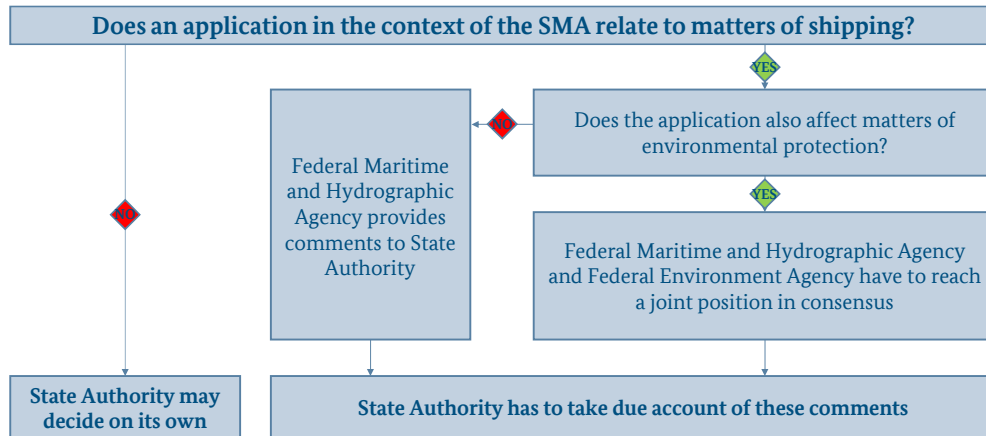
### Conditions for access to the Area (sec. 4):

4. LBEG shall examine whether the requirements for the approval are met. It shall obtain comments on the application from the Federal Maritime and Hydrographic Agency with respect to **matters of shipping** as well as with respect to **environmental matters**.  
In decision-making it shall take these comments into consideration.  
In matters relating to **environmental protection**, the **Federal Maritime and Hydrographic Agency** shall submit its comments in consensus with the **Federal Environment Agency**.



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## II.1 Role of sponsoring States: a glimpse into the German system (5)



## II.1 Obligations: sponsoring States vs. contractors

Sponsoring States have to ensure compliance by sponsored contractors with relevant rules and provisions:

- Obligations for contractors have to be established
- **Compliance with obligations has to be monitored and controlled**
- Instances of non-compliance have to be sanctioned

## II.1 Obligations: sponsoring States vs. contractors

### Compliance with obligations has to be monitored and controlled

- It is the responsibility of the (future) contractor to comply with obligations established.
- Activities of (future) contractors are subject to supervision by LBEG.
- LBEG may demand relevant information, may access and scrutinise operational notes and other documents, and may undertake visits.
- LBEG supervisors are authorised to enter operational facilities, business rooms, establishments and vehicles, and to seize objects.

**Sec. 8 paras.1-3 MBergG**

## II.1 Obligations: sponsoring States vs. contractors

Sponsoring States have to ensure compliance by sponsored contractors with relevant rules and provisions:

- Obligations for contractors have to be established
- Compliance with obligations has to be monitored and controlled
- **Instances of non-compliance have to be sanctioned**



## II.1 Obligations: sponsoring States vs. contractors

### Instances of non-compliance have to be sanctioned

- Minor instances of non-compliance:
  - administrative measures
  - fines
- Major instances of non-compliance: criminal/penal sanctions

**sec. 11 MBergG**

**sec. 12 MBergG**

## II.2 Obligations: sponsoring States vs. ISA

### Duties to cooperate

DR 3 (b)	DR 3 (e)	DR 4 no. 4
DR 6	DR 21	DR 22 (1)
DR 33 (2) (c)	DR 33 (3)	DR 34 (3)
DR 37 (1)	DR 58 (2)	DR 75 (5)
DR 96 (2)	DR 100 (3)	DR 105

## II.2 Obligations: sponsoring States vs. ISA

### Duties to cooperate

DR 3 (b) – duplication	DR 3 (e) – impact programmes	DR 4 no. 4 – evidence on harmful effects
DR 6 – sponsorship/report	DR 21 – sponsorship	DR 22 (1) – security
DR 33 (2) (c) – response to incidents	DR 33 (3) – non-compliance after incident	DR 34 (3) – notifiable events
DR 37 (1) – training plans	DR 58 (2) – review of pow	DR 75 (5) – audits
DR 96 (2) – inspections	DR 100 (3) – harassment etc. of inspectors	DR 105 – general duty to cooperate

## II.2 Obligations: sponsoring States vs. ISA

General duties	Duties in relation to Art. 145 UNCLOS	Duties in relation to sponsorship	Duties in relation to incidents etc.	Duties in the context of inspections etc.
DR 3 (b) – duplication	DR 3 (e) – impact programmes	DR 6 – report on sponsorship	DR 33 (2) (c) – response to incidents	DR 75 (5) – audits
DR 105 – general duty to cooperate	DR 4 no. 4 – evidence on harmful effects	DR 21 – sponsorship	DR 33 (3) – non-compliance after incident	DR 96 (2) – inspections
		DR 22 (1) – security	DR 34 (3) – notifiable events	DR 100 (3) – harassment etc. of inspectors

## II.2 Obligations: sponsoring States vs. ISA

### Question:

In the relationship between sponsoring States and the Authority, and given both the mandate of the latter to regulate activities in the Area and the comprehensive set of duties of the former to cooperate (and thereby assist the Authority in fulfilling its tasks), is the Authority also responsible to evaluate scope and appropriateness of the national deep sea mining regimes?



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## II.3 Obligations: sponsoring States directly

Precautionary approach  
Application of best environmental practices  
Approaches to compensation/damages

**not covered here**



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Role of sponsoring States



Challenges ahead

## III. Challenges ahead

### Practical challenges:

- Establishment of an authority with rights to control/monitor, enforce, and sanction
- Equipment of the authority with appropriate resources (finances, personnel, technology)

### Legal/administrative challenges:

- Dynamic nature of “due diligence”-duty: when is review/update due?
- Issue of duplication of processes etc.
- Achieving a level playing field for sponsoring States

Thank you.

In case of further questions: [urs.engels@bmwi.bund.de](mailto:urs.engels@bmwi.bund.de)



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