Administrative Procedure Act (Verwaltungsverfahrensgesetz, VwVfG)

of May 25th 1976; in the wording last promulgated on January 23rd 2003 (Federal Law Gazette I p. 102), amended by Article 1, of the Fourth Administrative Law Amendment Act (Viertes Gesetz zur Änderung verwaltungsverfahrensrechtlicher Vorschriften – 4. VwVfÄndG) of December 11th 2008 (Federal Law Gazette I p. 2418)

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Part I: Scope, local competence, electronic communication, official assistance

Section 1 Scope

(1) This Act shall apply to the administrative activities under public law of the official bodies:

1. of the Federal Government and public law entities, institutions and foundations operated directly by the Federal Government,

2. of the Länder and local authorities and other public law entities subject to the supervision of the Länder where these execute federal legislation on behalf of the federal authorities,

where no federal law or regulation contains similar or conflicting provisions.

(2) This Act shall also apply to the administrative activities under public law of the authorities referred to in paragraph 1, no. 2 when the Länder of their own authority execute federal legislation within the exclusive or concurrent powers of the Federal Government, where no federal law or regulation contains similar or conflicting provisions. This shall apply to the execution of federal legislation enacted after this Act comes into force only to the extent that the federal legislation, with the agreement of the Bundesrat, declares this Act to be applicable.

(3) This Act shall not apply to the execution of federal law by the Länder where the administrative activity of the authorities under public law is regulated by a law on administrative procedure of the Länder.

(4) For the purposes of this Act “authorities” shall comprise any body which performs tasks of public administration.

Section 2 Exceptions

(1) This Act shall not apply to the activities of churches, religious bodies and communities of belief and their associations and institutions.

(2) This Act also shall not apply to:

1. procedures of the federal or local tax authorities under the German Fiscal Code,

2. criminal and other prosecutions and the punishment of administrative offences, judicial proceedings carried out on behalf of foreign legal authorities in criminal and civil matters and, notwithstanding section 80, paragraph 4, to measures relating to the legal status of the judiciary,

3. proceedings at the German Patent and Trade Mark Office and before its appointed arbitrators,

4. proceedings under the Social Code,

5. the law on the Equalisation of Burdens,

6. the law on restitution.

(3) As regards the activities:

1. of the court administrations and the administrative bodies of the judiciary, including the public law entities under their supervision, this Act shall apply only in so far as re-examination is subject to control in administrative court proceedings;

2. of the authorities in assessing individuals' performance, suitability and the like, only sections 3a to 13, 20 to 27, 29 to 38, 40 to 52, 79, 80 and 96 shall apply;

3. of representatives of the Federal Government abroad, this Act shall not apply.

Section 3 Local competence

(1) The following shall be the provisions as regards local competence:

1. in matters relating to immovable assets or to a right or legal relationship linked to a certain place: the authority in whose districts the assets or the place is situated;

2. in matters relating to the running of a firm or one of its places of business, to the practice of a profession or to the carrying out of other permanent activity: the authority in whose district the firm or place of business is or is to be run, the profession practised or the permanent activity carried out;

3. in other matters relating to:

a) natural persons: the authority in whose district the natural person is or last was normally resident,

b) legal persons or associations: the authority in whose district the legal person or association is or last was legally domiciled;

4. in matters for which competence cannot be derived from nos. 1 to 3: the authority in whose district the event giving rise to the official action occurs.

(2) In the event of several authorities being competent under paragraph 1, the decision shall be taken by the authority first concerned with the matter unless the supervisory authority with overall competence in such matters determines that the decision shall be taken by another locally competent

authority. In cases in which one and the same matter involves more than one place of business of a firm, the supervisory authority can appoint one of the authorities competent under paragraph 1, no. 2 as the authority with overall competence where this is called for in the interests of a uniform decision for all concerned. The said supervisory authority shall also decide as to local competence when a number of authorities consider themselves either to possess or not to possess the relevant competence or when for other reasons there is some doubt in the matter of competence. Where an overall supervisory authority does not exist, the supervisory authorities competent in the matter shall take a decision jointly.

(3) If in the course of the administrative process some change in the circumstances determining competence occurs, the authority hitherto competent may continue the administrative process when this doing so is in the interest of simplicity and efficiency of execution while protecting the interests of those concerned and where the agreement of the authority now competent is obtained.

(4) Where delay involves a risk, any authority shall be locally competent to take measures which cannot be postponed when the event giving rise to the official action occurs in its district. The authority locally competent under paragraph 1, nos. 1 to 3 shall be informed immediately.

Section 3a Electronic communication

(1) The communication of electronic documents is permissible provided the recipient establishes access for this.

(2) Where legal provisions stipulate that a document be in written form, this may be replaced by electronic form unless determined otherwise by a legal provision. In this event the electronic document is to be provided with a qualified electronic signature in accordance with the Digital Signature Act. Signing with a pseudonym that makes it impossible to identify the person holding a signature key shall not be permissible.

(3) If an electronic document communicated to the authority is not suitable for processing by that authority, the authority shall inform the sender immediately, stating the technical specifications that apply. If a recipient claims that he is unable to process the electronic document communicated by the authority, it shall send it to him again in a suitable electronic format or as a written document.

Section 4 Authorities' duty to assist one another

(1) Each authority shall, when requested to do so, render assistance to other authorities (official assistance).

(2) It shall not be deemed official assistance when:

1. authorities assist each other in the course of a relationship in which one issues directives to another;

2. assistance involves actions which are the task of the authority approached.

Section 5 Circumstances permitting and limits to official assistance

(1) An authority may request official assistance particularly when:

1. for legal reasons it cannot itself perform the official action;

2. for material reasons, such as the lack of personnel or equipment needed to perform the official action, it cannot itself do so;

3. to carry out its tasks it requires knowledge of facts unknown to and unobtainable by it;

4. to carry out its tasks it requires documents or other evidence in the possession of the authority approached;

5. it could only carry out the task at substantially greater expense than the authority approached.

(2) The authority approached may not provide assistance when:

1. it is unable to do so for legal reasons;

2. such assistance would be seriously detrimental to the Federal Republic or to a Land thereof.

The authority approached shall not be obliged to submit documents or files nor to impart information when proceedings must be kept secret either by their nature or by law.

(3) The authority approached need not provide assistance when:

1. another authority can provide the same assistance with much greater ease or at much lower cost;

2. it could only provide such assistance at disproportionately great expense;

3. with regard to the tasks carried out by the authority requesting assistance, it could only provide such assistance by seriously jeopardizing its own work.

(4) The authority approached may not refuse assistance on the grounds that it considers the request inappropriate for reasons other than those given in paragraph 3, or considers the purpose to be

achieved by the official assistance inappropriate.

(5) If the authority approached does not consider itself obliged to provide assistance, it shall so inform the authority making the request. If the latter insists that official assistance be provided, the decision as to whether or not an obligation to furnish such assistance exists shall be taken by the supervisory authority with overall competence in the matter or, where no such authority exists, the supervisory authority competent in matters with which the authority of whom the request is made is concerned.

Section 6 Choice of authority

If more than one authority comes into question as a possible provider of official assistance, assistance shall where possible be requested of an authority of the lowest administrative level of the administrative branch to which the authority requesting assistance belongs.

Section 7 Execution of official assistance

(1) The admissibility of the measure to be put into effect by official assistance shall be determined by the law applying to the authority requesting assistance; the official assistance shall be carried out in accordance with the law applying to the authority of which the request is made.

(2) The authority requesting assistance shall be responsible vis-à-vis the authority from which assistance is requested for the legality of the measure to be taken. The authority of which assistance is requested shall be responsible for the execution of the official assistance.

Section 8 Cost of official

(1) The authority requesting assistance shall not be liable to pay the authority from which official assistance is requested any administrative fee for such assistance. It shall, however, reimburse the latter for individual expenses in excess of thirty-five (35) euros upon request. If authorities belonging to the same legal entity provide each other with assistance,

no expenses shall be reimbursed.

(2) If the authority from which official assistance is requested undertakes an official action for which fees are charged, then that authority shall be entitled to such fees paid by a third party (administrative charges, fees, expenses).

Part II: General regulations governing administrative procedure

Division 1: Procedural principles

Section 9 Definition of administrative procedure

For the purposes of this Act, administrative procedure shall be the activity of authorities having an external effect and directed to the examination of basic requirements, the preparation and adoption of an administrative act or to the conclusion of an administrative agreement under public law; it shall include the adoption of the administrative act or the conclusion of the agreement under public law.

Section 10 Administrative procedure not tied to form

The administrative procedure shall not be tied to specific forms when no legal provisions exist which specifically govern procedural form. It shall be carried out in an uncomplicated, appropriate and timely fashion.

Section 11 Capacity to participate

The following shall be capable of participating in such procedures:

1. natural and legal persons,

2. associations, in so far as they can have rights,

3. authorities.

Section 12 Capacity to act

(1) The following shall be capable of acting in administrative procedures:

1. natural persons having legal capacity under civil law,

2. natural persons whose legal capacity is limited under civil law, where they are recognised as having legal capacity for the object of the procedure under civil law or capable of acting under public law,

3. legal persons and associations (section 11, no. 2) represented by their legal representatives or of specially appointed individuals,

4. authorities represented by their heads, representatives or persons appointed by them.

(2) If there is a reservation of consent under section 1903 of the Civil Code regarding the object of the procedure, a person of legal capacity under the care of a custodian shall be deemed capable of acting in administrative procedures only in so far as he can act, under the provisions of civil law, without the consent of the custodian, or he is recognized as being capable of acting under the provisions of public law.

(3) Sections 53 and 55 of the Code of Civil Procedure shall apply mutatis mutandis.

Section 13 Participants

(1) Participants shall be:

1. those making and opposing an application,

2. those to whom the authority intends to direct or has directed the administrative act,

3. those with whom the authority intends to conclude or has concluded an agreement under public law,

4. those who have been involved in the procedure by the authority under paragraph 2.

(2) The authority may ex officio or upon request involve as participants those whose legal interests may be affected by the result of proceedings. Where such result has a legal effect for a third party, the latter may upon request be involved in the proceedings as a participant. If the authority is aware of such third parties, it shall inform them that proceedings have commenced.

(3) A person who is to be heard, but is not a participant within the sense of paragraph 1, does not thereby become a participant.

Section 14 Authorised representatives and advisers

(1) A participant may cause himself to be represented by a person authorised for that purpose. The authorisation shall empower the person to whom it is given to take all actions related to the administrative proceedings except where its contents indicate otherwise. The authorized person shall provide written evidence of his authorisation upon request. Any revocation of authorisation shall only become effective vis-àvis the authority when received by it.

(2) Authorisation shall not be terminated either by the death of the person granting such authorisation, or by any change in his capacity to act or in his legal representative; when however appearing in the administrative proceedings on behalf of the legal successor, the authorized person shall upon request furnish written evidence of his authorisation.

(3) Where a person is appointed to act as representative in proceedings, he shall be the person with whom the authority deals. The authority may approach the actual participant where he is obliged to cooperate. If the authority does approach the participant, the authorized representative is to be informed. Provisions governing service on the representative shall remain unaffected.

(4) A participant may appear in negotiations and discussions with an adviser. Any points made by the adviser shall be deemed to have been put by the participant except where the latter immediately contradicts them.

(5) Authorized representatives and advisers shall be rejected where they provide legal services in violation of section 3 of the Legal Services Act.

(6) Authorised representatives and advisers may be refused permission to make submissions if they are unsuitable to do so; they may be refused permission to make a verbal submission only if they are not capable of proper representation. Persons authorized under section 67, paragraph 2, first and second sentence, items 3 to 7 of the Code of Administrative Court Procedure to act in administrative proceedings, may not be refused such permission.

(7) Refusal of permission under paragraphs 5 and 6 shall also be made known to the participant whose authorised representative or adviser is refused permission. Acts relating to the proceedings undertaken by the authorised representative or adviser after such refusal of permission shall be invalid.

Section 15 Appointment of an authorised recipient

A participant with no permanent or habitual residence, registered office or agency in Germany shall on request give to the authority the name of an authorised recipient in Germany within a reasonable period. Should he fail to do so, any document sent to him shall be regarded as received on the seventh day after its posting, and a document transmitted electronically shall be regarded as received on the third day after its transmission. This shall not apply if it is established that the document did not reach the recipient or reached him at a later date. The participant

shall be informed of the legal consequences of this failure.

Section 16 Official appointment of a representative

(1) Where no representative is appointed, the guardianship court shall, at the request of the authority, appoint a suitable representative for:

1. a participant whose identity is unknown;

2. an absent participant whose residence is unknown or who is prevented from looking after his affairs;

3. a participant without residence within Germany who does not comply with the authority’s request to nominate a representative within the period set;

4. a participant whose mental illness or physical, mental or emotional disability does not permit him to take part personally in the administrative proceedings;

5. matters which are the subject of proceedings and where there is no owner, claimant, or person responsible to defend the rights and obligations in question.

(2) In cases covered by paragraph 1, no. 4, the court responsible for appointing a representative shall be the guardianship court in whose district the participant has his habitual residence; otherwise, the court responsible shall be the guardianship court in whose district the authority making the request is located.

(3) The representative shall be entitled to claim a reasonable remuneration and refund of his expenses from the legal entity of the authority requesting his appointment. The authority may require the person represented to refund its expenses. It shall determine the amount of remuneration and ascertain the amount of expenditure and costs.

(4) In other respects, the appointment and office of the representative in cases listed in paragraph 1, no. 4 shall be governed by the provisions on guardianship [Betreuung]; in other cases, the provisions on trusteeship [Pflegschaft] shall apply as appropriate.

Section 17 Representatives in the case of identical submissions

(1) In the case of applications and petitions submitted in an administrative proceeding signed by more than fifty persons, or presented in the form of duplicated and identical texts (identical submissions), the person deemed to be representing the other signatories shall be that signatory who is identified by his name, profession and address as being their representative unless he is named by them as authorised representative [Bevollmächtigter]. Only a natural person may be a representative [Vertreter].

(2) The authority may disregard identical submissions which do not contain the information referred to in paragraph 1, first sentence clearly visible on each page containing a signature or which do not comply with the requirements of paragraph 1, second sentence. If the authority wishes to proceed in this manner, it must make the fact known by giving notice in accordance with local custom. The authority may, moreover, disregard identical submissions when the signatories have failed to give their name or address or have done so in an illegible manner.

(3) The power of representation shall lapse as soon as the representative or the person represented informs the authority in writing that this is the case. The representative may only make such a statement in respect of all the persons represented. If the person represented makes such a statement, he shall at the same time inform the authority whether he wishes to maintain his submission and whether he has appointed an authorised representative.

(4) Once the representative is no longer entitled to act, the authority may require the persons no longer represented to appoint a joint representative within a reasonable period. When the number of persons subject to such a requirement exceeds 50, the authority may make the fact known by giving notice in accordance with local custom. If the requirement is not complied with within the period set, the authority may ex officio appoint a joint representative.

Section 18 Representatives for participants with the same interests

(1) If more than fifty people are involved as participants in administrative proceedings with the same interests and are unrepresented, the authorities may require them within a reasonable period to appoint a joint representative where otherwise the regular execution of administrative proceedings

would be impaired. If these persons do not comply within the period set, the authority may ex officio appoint a joint representative. Only a natural person may be a representative.

(2) The power of representation shall lapse as soon as the representative or person represented informs the authority in writing that this is the case. The representative may make such a statement only in respect of all the persons represented. If the person represented makes such a statement, he shall at the same time inform the authority whether he wishes to maintain his submission and whether he has appointed an authorised representative.

Section 19 Provisions relating to representatives in the case of identical submissions and those for participants with the same interests

(1) The representative shall protect carefully the interests of the persons he represents. He may undertake all actions relating to the administrative proceedings and shall not be tied to instructions.

(2) The provisions of section 14, paragraphs 5 to 7 shall apply mutatis mutandis.

(3) The representative appointed by the authority shall be entitled to claim from its legal entity a reasonable remuneration and refund of his expenses. The authority may require the persons represented to refund its expenditure in equal shares. It shall determine the amount of remuneration and ascertain the amount of expenditure and costs.

Section 20 Persons excluded

(1) The following persons may not act on behalf of an authority:

1. a person who is himself a participant;

2. a relative of a participant;

3. a person representing a participant by virtue of the law or of a general authorisation or in the specific administrative proceedings;

4. a relative of a person who is representing a participant in the proceedings;

5. a person employed by a participant and receiving remuneration from him, or one active on his board of management, supervisory board or similar body; this shall not apply to a person whose employing body is a participant;

6. a person who, outside his official capacity, has furnished an opinion or otherwise been active in the matter. Anyone who may benefit or suffer directly as a result of the action or the decision shall be on an equal footing with the participant. This shall not apply when the benefit or disadvantage is based only on the fact that someone belongs to an occupational group or segment of the population whose joint interests are affected by the matter.

(2) Paragraph 1 shall not apply to elections to an honorary position or to the removal of a person from such a position.

(3) Any person excluded under paragraph 1 may, when there is a risk involved in delay, undertake measures which cannot be postponed.

(4) If a member of a committee (section 88) considers himself to be excluded, or where there is doubt as to whether the provisions of paragraph 1 apply, the chairman of the committee must be informed. The committee shall decide on the matter of exclusion; the person concerned shall not participate in the decision. The excluded member may not attend further discussions or be present when decisions are taken.

(5) Relatives for the purposes of paragraph 1, nos. 2 and 4 shall be:

1. fiancé(e)s,

2. spouses,

3. direct relations and direct relations by marriage,

4. siblings,

5. children of siblings,

6. spouses of siblings and siblings of spouses,

7. siblings of parents,

8. persons connected by a long-term foster relationship involving a shared dwelling in the manner of parents and children (foster parents and foster children).

The persons listed in sentence 1 shall be deemed to be relatives even where

1. the marriage producing the relationship in nos. 2, 3, and 6 no longer exists;

2. the relationship or relationship by marriage in nos. 3 to 7 ceases to exist through adoption;

3. in case no. 8, a shared dwelling is no longer involved, so long as the persons remain connected as parent and child.

Section 21 Fear of prejudice

(1) Where grounds exist to justify fears of prejudice in the exercise of official duty, or if a participant maintains that such grounds exist, anyone who is to be involved in administrative proceedings on behalf of an authority shall inform the head of the authority or the person appointed by him and shall at his request refrain from such involvement. If the fear of prejudice relates to the head of the authority, the supervisory authority shall request him to refrain from involvement where he has not already done so of his own accord.

(2) Section 20, paragraph 4 shall apply as appropriate to a member of a committee (section 88).

Section 22 Commencement of proceedings

The authority shall decide after due consideration whether and when it is to instigate administrative proceedings. This shall not apply when the authority by law

1. must act ex officio or upon application;

2. may only act upon application and no such application is submitted.

Section 23 Official language

(1) The official language shall be German.

(2) If applications are made to an authority in a foreign language, or petitions, evidence, documents and the like are filed in a foreign language, the authority shall immediately require that a translation be provided. Where necessary the authority may require that the translation provided be made by a certified or publicly authorised and sworn translator or interpreter. If the required translation is not furnished without delay, the authority may, at the expense of the participant, itself arrange for a translation. Where the authority employs interpreters or translators, they shall receive remuneration in accordance with the appropriate provisions of the Judicial Remuneration and Compensation Act (Justizvergütungs- und –entschädingungsgesetz, JVEG).

(3) If a notice, application or statement of intent fixes a period within which the authority is to act in a certain manner and such notifications are received in a foreign language, the period shall commence only at the moment that a translation is available to the authority.

(4) If a notice, application or statement of intent received in a foreign language fixes a period for a participant vis-à-vis the authority, enforces a claim under public law or requires the fulfilment of an action, the said notice, application or statement of intent shall be considered as being received by the authority on the actual date of receipt where at the authority's request a translation is provided within the period fixed by the authority. Otherwise the moment of receipt of the translation shall be deemed definitive, unless international agreements provide otherwise. This fact should be made known when a period is fixed.

Section 24 Principle of investigation

(1) The authority shall determine the facts of the case ex officio. It shall determine the type and scope of investigation and shall not be bound by the participants' submissions and motions to admit evidence.

(2) The authority shall take account of all circumstances of importance in an individual case, including those favourable to the participants.

(3) The authority shall not refuse to accept statements or applications falling within its sphere of competence on the ground that it considers the statement or application inadmissible or unjustified.

Section 25 Advice and information

(1) The authority shall cause statements or applications to be made or corrected when it is clear that these were not submitted or were incorrectly submitted only due to error or ignorance. It shall, where necessary, give information regarding the rights and duties of participants in the administrative proceedings.

(2) Where required, the authority shall proceed, even before an application is made, to discuss with the prospective applicant what evidence and documents he will have to submit as well as options for expediting the proceedings. Where it serves to expedite the proceedings, the authority should inform the applicant immediately upon receipt of the application about the expected duration of the

proceedings and confirm whether or not the application and the relevant documents received are complete.

Section 26 Evidence

(1) The authority shall utilise such evidence as, after due consideration, it deems necessary in order to ascertain the facts of the case. In particular it may:

1. gather information of all kinds,

2. hear the evidence of participants, witnesses and experts or gather statements in writing or electronically from participants, experts and witnesses,

3. obtain documents and records,

4. visit and inspect the locality involved.

(2) The participants shall assist in ascertaining the facts of the case. In particular they shall state such facts and evidence as are known to them. A more extensive duty to assist in ascertaining the facts, and in particular the duty to appear personally or make a statement, shall exist only where the law specifically requires this.

(3) Witnesses and experts shall be obligated to make a statement or furnish opinions, when the law specifically requires this. When the authority has called upon witnesses and experts, they shall receive compensation or remuneration upon application in accordance with the appropriate provisions of the Judicial Remuneration and Compensation Act (Justizvergütungs- und –entschädingungsgesetz, JVEG).

Section 27 Affirmation in place of oath

(1) In ascertaining the facts of a case, the authority may require and accept an affirmation in place of oath only when the acceptance of such an affirmation concerning the matter involved and in the proceedings concerned is allowed by law or regulation and the authority has been legally declared competent. An affirmation in place of oath shall only be required where other means of establishing the truth are not available, have been without result or require disproportionate expense. An affirmation in place of oath may not be required of persons who are unfit to take an oath under section 393 of the Code of Civil Procedure.

(2) If an affirmation in place of oath is recorded in writing by an authority, the only persons authorised to make such a recording shall be the head of the authority, his general deputy and members of the civil service qualified for judicial office or who fulfil the requirements of section 110, first sentence of the German Judiciary Act. The head of the authority or his general deputy may authorise in writing other members of the civil service to act generally in this capacity or for individual cases.

(3) The person making the affirmation shall confirm the correctness of his statement on the matter concerned and declare “I affirm in place of an oath that to the best of my knowledge I have told the pure truth and have concealed nothing”. Authorised representatives and advisers may take part in the recording of an affirmation in place of oath.

(4) Before an affirmation in place of oath is accepted, the person making the affirmation shall be informed of the significance of such an affirmation and the legal consequences under criminal law of making an incorrect or incomplete statement. The fact that this has been done must be included in the written record.

(5) The written record shall in addition contain the names of those present and the place and date of the record. The written record shall be read to the person making the affirmation for his approval, or, upon request, shall be made available for him to inspect. The fact that this has been done should be noted and signed by the person making the affirmation. The written record shall then be signed by the person receiving the affirmation in place of oath and by the person actually making the written record.

Section 28 Hearing of participants

(1) Before an administrative act affecting the rights of a participant

may be executed, the latter must be given the opportunity of commenting on the facts relevant to the decision.

(2) This hearing may be omitted when not required by the circumstances of an individual case and in particular when:

1. an immediate decision appears necessary in the public interest or because of the risk involved in delay;

2. the hearing would jeopardise the observance of a time limit vital to the decision;

3. the intent is not to diverge, to his disadvantage, from the actual statements made by a participant in an application or statement;

4. the authority wishes to issue a general order or similar administrative acts in considerable numbers or administrative acts using automatic equipment;

5. measures of administrative enforcement are to be taken.

(3) A hearing shall not be granted when this is grossly against the public interest.

Section 29 Inspection of documents by participants

(1) The authority shall allow participants to inspect the documents connected with the proceedings where knowledge of their contents is necessary in order to assert or defend their legal interests. Until administrative proceedings have been concluded, the foregoing sentence shall not apply to draft decisions and work directly connected with their preparation. Where participants are represented as provided under sections 17 and 18, only the representatives shall be entitled to inspect documents.

(2) The authority shall not be obliged to allow the inspection of documents where this would interfere with the orderly performance of the authority’s tasks, where knowledge of the contents of the documents would be to the disadvantage of the country as a whole or of one of the Länder, or where proceedings must be kept secret by law or by their very nature, i.e. in the rightful interests of participants or of third parties.

(3) Inspection of documents shall take place in the offices of the record-keeping authority. In individual cases, documents may also be inspected at the offices of another authority or of the diplomatic or consular representatives of the Federal Republic of Germany abroad. The authority keeping the records may make further exceptions.

Section 30 Secrecy

Participants shall be entitled to require that matters of a confidential nature, especially those relating to their private lives and business, shall not be revealed by the authority without permission.

Division 2: Time limits, deadlines, restoration

Section 31 Time limits and deadlines

(1) The calculation of time limits and the setting of deadlines shall be subject to the provisions of sections 187 to 193 of the Civil Code as appropriate, except where otherwise provided by paragraphs 2 to 5.

(2) A time limit set by an authority shall begin the day after the announcement of the time limit, except where the person concerned is informed otherwise.

(3) If the end of a time limit falls on a Sunday, a public holiday or a Saturday, the time limit shall end with the end of the next working day. This shall not apply when the person concerned has been informed that the time limit shall end on a certain day and has been referred to this provision.

(4) If an authority has to fulfil a task only for a certain period, this period shall end at the end of the last day thereof, even where this is a Sunday, a public holiday or a Saturday.

(5) A deadline fixed by an authority shall be observed even when it falls on a Sunday, a public holiday or a Saturday.

(6) When a time limit is fixed in terms of hours, Sundays, public holidays and Saturdays shall be included.

(7) Time limits fixed by an authority may be extended. Where such time limits have already expired, they may be extended retrospectively, particularly when it would be unfair to allow the legal consequences resulting from expiration of the time limit to stand. The authority may combine the extension of the time limit with an additional stipulation under section 36.

Section 32 Restoration of the status quo ante

(1) Where a person has through no fault of his own been prevented from observing a statutory time limit, he shall, upon request, be granted a restoration of his original legal position. The fault of a representative shall be deemed to be that of the person he represents.

(2) Such an application must be made within two weeks of the removal of the obstacle. The facts justifying the application must be substantiated when the application is made or during the proceedings connected with the application. The action which the person has failed to carry out must be effected within the application period. If this is done, restoration may be granted even without application.

(3) After one year has elapsed from the end of the time limit which was not observed, no application for restoration may be made and the action not carried out cannot be made good, except where it was impossible for this to be done within the period of a year for reasons of force majeure.

(4) The application for restoration shall be decided upon by the authority responsible for deciding on the matter of the action not carried out.

(5) Restoration shall not be permitted when this is excluded by legal provision.

Division 3: Official certification

Section 33 Certification of documents

(1) Every authority shall be authorised to certify as true copies of documents it has itself issued. In addition, authorities empowered by statutory instrument of the Federal Government under section 1, paragraph 1, no. 1 and the authorities empowered under the law of the Länder may certify copies as true where the original document was issued by an authority or the copy is required for submission to an authority, except where the law provides that the issuing of certified copies of documents from official records and archives is the exclusive province of other authorities; the statutory instrument does not require approval of the Bundesrat.

(2) Copies may not be certified as true when circumstances justify the assumption that the original contents of the documents, the copy of which is to be certified, have been changed, and particularly when the document concerned contains gaps, deletions, insertions, amendments, illegible words, figures or signs, traces of the erasure of words, figures or signs, or where the continuity of a document composed of several sheets has been interrupted.

(3) A copy is certified as true by means of a certification note placed at the end of the copy. This note must contain:

1. an exact description of the document of which a copy is being certified,

2. a statement that the certified copy is identical with the original document submitted,

3. a statement to the effect that the certified copy is only issued for submission to the authority specified, when the original document was not issued by an authority,

4. the place and date of certification, the signature of the official responsible for certification and the official stamp.

(4) Paragraphs 1 to 3 shall apply accordingly to the certification of

1. photocopies, phototypes and similar reproductions produced by technical means,

2. negatives of written documents, which are produced by photographic means and stored by an authority,

3. print-outs of electronic documents,

4. electronic documents,

a) produced to reproduce a written document,

b) which have been given a technical format different to that of the initial document associated with a qualified electronic signature.

(5) In addition to what is stated in paragraph 3 second sentence, the certification note must in the case of certification of

1. the print-out of an electronic document associated with a qualified electronic signature contain a statement of

a) whom the signature check identifies as holder of the signature,

b) the date shown by the signature check for the application of the signature, and

c) which certificates containing which data this signature was based on;

2. an electronic document contain the name of the official responsible for certification and the designation of the authority carrying out certification; the signature of the official responsible for certification and the official seal in accordance with paragraph 3 second sentence number 4 shall be replaced by a permanently verifiable qualified electronic signature.

If an electronic document given a different technical format to the initial document associated with a qualified electronic signature is certified in accordance with sentence 1 number 2, the certification note must in addition contain the statements described in sentence 1 number 1 for the initial document.

(6) Where certified, the documents produced in accordance with paragraph 4 shall be equivalent to certified copies.

Section 34 Certification of signatures

(1) The authorities empowered by statutory orders by the Federal Government under section 1, paragraph 1, no. 1 and the authorities empowered under the law of the Länder may certify signatures as true when the signed document is required for submission to an authority or other official body to which the signed document must be submitted by law. This shall not apply to:

1. signatures without accompanying text,

2. signatures which require public certification under section 129 of the Civil Code.

(2) A signature may only be certified when it has been made or acknowledged in the presence of the certifying official.

(3) The certification note shall be placed immediately adjacent to the signature to be certified and must contain:

1. a statement that the signature is genuine,

2. an exact identification of the person whose signature is certified, and also a statement as to whether the official responsible for certification was satisfied as to the identity of the person and whether the signature was made or acknowledged in his presence,

3. a statement that the certification is only for submission to the authority or other body mentioned,

4. the place and date of certification, the signature of the official responsible for certification and the official stamp.

(4) Paragraphs 1 to 3 apply mutatis mutandis to the certification of personal identificatory marks.

(5) Statutory instruments under paragraphs 1 and 4 do not require the approval of the Bundesrat.

Part III: Administrative acts

Division 1: Materialisation of an administrative act

Section 35 Definition of an administrative act

An administrative act shall be any order, decision or other sovereign measure taken by an authority to regulate an individual case in the sphere of public law and intended to have a direct, external legal effect. A general order shall be an administrative act directed at a group of people defined or definable on the basis of general characteristics or relating to the public law aspect of a matter or its use by the public at large.

Section 36 Additional stipulations to an administrative act

(1) An administrative act which a person is entitled to claim may be accompanied by an additional stipulation only when this is permitted by law or when it is designed to ensure that the legal requirements for the administrative act are fulfilled.

(2) Notwithstanding the provisions of paragraph 1, an administrative act may, after due consideration, be issued with:

1. a stipulation to the effect that a privilege or burden shall begin or end on a certain date or shall last for a certain period (time limit);

2. a stipulation to the effect that the commencement or ending of a privilege or burden shall depend upon a future occurrence which is uncertain (condition);

3. a reservation regarding annulment;

or be combined with

4. a stipulation requiring the beneficiary to perform, suffer or cease a certain action (obligation);

5. a reservation to the effect that an obligation may subsequently be introduced, amended or supplemented.

(3) An additional stipulation may not counteract the purpose of the administrative act.

Section 37 Determinateness and form of an administrative act

(1) An administrative act must be sufficiently clearly defined in content.

(2) An administrative act may be issued in written, electronic, verbal or other form. A verbal administrative act must be confirmed in writing or electronically when there is justified interest that this should be done and the person affected requests this immediately. An electronic administrative act shall be confirmed in writing under the same conditions; section 3a, paragraph 2 shall not apply in this respect.

(3) A written or electronic administrative act must indicate the issuing authority and contain the signature or name of the head of the authority, his representative or deputy. If electronic form is used for an administrative act for which written form is ordered by a legal provision, the qualified certificate on which the electronic signature is based or an associated qualified certificate of attribution shall also indicate the issuing authority.

(4) For an administrative act, permanent verifiability may be prescribed by a legal provision for the signature required in accordance with section 3a, paragraph 2.

(5) In the case of a written administrative act issued by means of automatic equipment, the signature and name required in paragraph 3 above may be omitted. Symbols may be used to indicate content where the person for whom the administrative act is intended or who is affected is able to comprehend its contents clearly from the explanations given.

Section 38 Assurance

(1) The agreement by a competent authority to issue a certain administrative act at a later date or not to do so (assurance) must be in writing in order to be valid. If, before the administrative act in respect of which such assurance was given, participants have to be heard or the participation of another authority or of a committee is required by law, the assurance may only be given after the participants have been heard or after participation of such authority or committee.

(2) Notwithstanding the provisions of paragraph 1, first sentence, section 44 shall apply as appropriate to the invalidity of the assurance; section 45, paragraph 1, nos. 3 to 5 and paragraph 2 shall apply as appropriate to the remedying of deficiencies in the hearing of participants and the participation of other authorities or committees; section 48 shall apply as appropriate to withdrawal; and, notwithstanding paragraph 3, section 49 shall apply as appropriate to revocation.

(3) After an assurance has been given the basic facts or legal situation of the case change to such an extent that, had the authority known of the subsequent change, it would not have given the assurance or could not have done so for legal reasons, the authority is no longer bound by its assurance.

Section 39 Grounds for an administrative act

(1) A written or electronic administrative act, as well as an administrative act confirmed in writing or electronically, shall be accompanied by a statement of grounds. This statement of grounds must contain the chief material and legal grounds led the authority to take its decision. The grounds given in connection with discretionary decisions should also contain the points of view which the authority considered while exercising its powers of discretion.

(2) No statement of grounds is required:

1. when the authority is granting an application or is acting upon a declaration and the administrative act does not infringe upon the rights of another;

2. when the person for whom the administrative act is intended or who is affected by the act is already acquainted with the opinion of the authority as to the material and legal positions and able to comprehend it without argumentation;

3. when the authority issues identical administrative acts in considerable numbers or with the help of automatic equipment and individual cases do not merit a statement of grounds;

4. when this derives from a legal provision;

5. when a general order is publicly promulgated.

Section 40 Discretion

Where an authority is empowered to act at its discretion, it shall do so in accordance with the purpose of such empowerment and shall respect the legal limits to such discretionary powers.

Section 41 Notification of an administrative act

(1) An administrative act shall be made known to the person for whom it is intended or who is affected thereby. Where an authorized representative is appointed, the notification may be addressed to him.

(2) A written administrative act shall be deemed notified on the third day after posting if posted to an address within Germany. An administrative act transmitted electronically within Germany or abroad shall be deemed notified on the third day after sending. This shall not apply if the administrative act was not received or was received at a later date; in case of doubt the authority must prove the receipt of the administrative act and the date of receipt.

(3) An administrative act may be publicly promulgated where this is permitted by law. A general order may also be publicly promulgated when notification of those concerned is impracticable.

(4) The public promulgation of an administrative act in written or electronic form shall be effected by advertising the operative part in accordance with local custom. Promulgation shall state where the administrative act and its statement of grounds may be inspected. The administrative act shall be deemed to have been promulgated two weeks after the date of advertising in accordance with local custom. A general order may fix a different day for this purpose but in no case may this be earlier than the date following advertisement.

(5) Provisions governing the promulgation of an administrative act by service shall remain unaffected.

Section 42 Obvious errors in an administrative act

The authority may at any time correct typographical mistakes, errors in calculation and similar obvious inaccuracies in an administrative act. When the person concerned has a justifiable interest,

correction must be undertaken. The authority shall be entitled to request presentation of the document for correction.

Section 42a Fictitious approval

(1) Upon expiry of a specified decision-making period, an approval that has been applied for shall be deemed granted (fictitious approval) if this is stipulated by law and if the application is sufficiently clearly defined in content. The regulations concerning the validity of administrative acts and the proceedings for legal remedy shall apply mutatis mutandis.

(2) The decision-making period pursuant to paragraph 1 fist sentence shall be three months unless otherwise stipulated by law. The period starts upon reception of the complete application documents. It may be extended once by a reasonable period of time if this is warranted by the complexity of the matter. Any such extension of the decision-making period shall be justified and communicated in good time.

(3) Upon request, the fact that the approval is deemed granted (fictitious approval) shall be confirmed in writing to the person to whom the administrative act would have had to be notified pursuant to section 41, paragraph 1.

Division 2: Validity of an administrative act

Section 43 Validity of an administrative act

(1) An administrative act shall become effective vis-à-vis the person for whom it is intended or who is affected thereby at the moment he is notified thereof. The administrative act shall apply in accordance with its tenor as notified.

(2) An administrative act shall remain effective for as long as it is not withdrawn, annulled, otherwise cancelled or expires for reasons of time or for any other reason.

(3) An administrative act which is invalid shall be ineffective.

Section 44 Invalidity of an administrative act

(1) An administrative act shall be invalid where it is very gravely erroneous and this is apparent when all relevant circumstances are duly considered.

(2) Regardless of the conditions laid down in paragraph 1, an administrative act shall be invalid if:

1. it is issued in written or electronic form but fails to show the issuing authority;

2. by law it can be issued only by means of the delivery of a document, and this method is not followed;

3. it has been issued by an authority acting beyond its powers as defined in section 3, paragraph 1, no. 1 and without further authorisation;

4. it cannot be implemented by anyone for material reasons;

5. it requires an action in contravention of the law incurring a sanction in the form of a fine or imprisonment;

6. it offends against morality.

(3) An administrative act shall not be invalid merely because:

1. provisions regarding local competence have not been observed, except in a case covered by paragraph 2, no. 3;

2. a person excluded under section 20, paragraph 1, first sentence, nos.

2 to 6 is involved;

3. a committee required by law to play a part in the issuing of the administrative act did not take or did not have a quorum to take the necessary decision;

4. the collaboration of another authority required by law did not take place.

(4) If the invalidity applies only to part of the administrative act it shall be entirely invalid where the invalid portion is so substantial that the authority would not have issued the administrative act without the invalid portion.

(5) The authority may ascertain invalidity at any time ex officio; it must be ascertained upon application when the person making such an application has a justified interest in so doing.

Section 45 Making good defects in procedure or form

(1) An infringement of the regulations governing procedure or form which does not render the administrative act invalid under section 44 shall be ignored when:

1. the application necessary for the issuing of the administrative act is subsequently made;

2. the necessary statement of grounds is subsequently provided;

3. the necessary hearing of a participant is subsequently held;

4. the decision of a committee whose collaboration is required in the issuing of the administrative act is subsequently taken;

5. the necessary collaboration of another authority is subsequently obtained.

(2) Actions referred to in paragraph 1 may be made good up to the final court of administrative proceedings.

(3) Where an administrative act lacks the necessary statement of grounds or has been issued without the necessary prior hearing of a participant, so that the administrative act was unable to be contested in good time, failure to observe the period for legal remedy shall be regarded as unintentional. The event resulting in restoration of the status quo ante under section 32, paragraph 2 shall be deemed to occur when omission of the procedural action is made good.

Section 46 Consequences of defects in procedure and form

Application for annulment of an administrative act which is not invalid under section 44 cannot be made solely on the ground that the act came into being through the infringement of regulations governing procedure, form or local competence, where it is evident that the infringement has not influenced the decision on the matter.

Section 47 Converting a defective administrative act

(1) A defective administrative act may be converted into a different administrative act when it has the same aim, could legally have been issued by the issuing authority using the procedures and forms in fact adopted, and when the requirements for its issue have been fulfilled.

(2) Paragraph 1 shall not apply when the different administrative act would contradict the clearly recognisable intention of the issuing authority or when its legal consequences would be less favourable for the person affected than those of the defective act. Conversion is not permissible when the withdrawal of the administrative act would not be allowable.

(3) A decision dictated by a legal requirement cannot be converted into a discretionary decision.

(4) Section 28 shall apply mutatis mutandis.

Section 48 Withdrawal of an unlawful administrative act

(1) An unlawful administrative act may, even after it has become non-appealable, be withdrawn wholly or in part either retrospectively or with effect for the future. An administrative act which gives rise to a right or an advantage relevant in legal proceedings or confirms such a right or advantage (beneficial administrative act) may only be withdrawn subject to the restrictions of paragraphs 2 to 4.

(2) An unlawful administrative act which provides for a one-time or continuing payment of money or a divisible material benefit, or which is a prerequisite for these, may not be withdrawn so far as the beneficiary has relied upon the continued existence of the administrative act and his reliance deserves protection relative to the public interest in a withdrawal. Reliance is in general deserving of protection when the beneficiary has utilised the contributions made or has made financial arrangements which he can no longer cancel, or can cancel only by suffering a disadvantage which cannot reasonably be asked of him. The beneficiary cannot claim reliance when:

1. he obtained the administrative act by false pretences, threat or bribery;

2. he obtained the administrative act by giving information which was substantially incorrect or incomplete;

3. he was aware of the illegality of the administrative act or was unaware thereof due to gross negligence.

In the cases provided for in sentence 3, the administrative act shall in general be withdrawn with retrospective effect.

(3) If an unlawful administrative act not covered by paragraph 2 is withdrawn, the authority shall upon application make good the disadvantage to the person affected deriving from his reliance on

the existence of the act to the extent that his reliance merits protection having regard to the public interest. Paragraph 2, third sentence shall apply. However, the disadvantage in financial terms shall be made good to an amount not to exceed the interest which the person affected has in the continuance of the administrative act. The financial disadvantage to be made good shall be determined by the authority. A claim may only be made within a year, which period shall commence as soon as the authority has informed the person affected thereof.

(4) If the authority learns of facts which justify the withdrawal of an unlawful administrative act, the withdrawal may only be made within one year from the date of gaining such knowledge. This shall not apply in the case of paragraph 2, third sentence, no. 1.

(5) Once the administrative act has become non-appealable, the decision concerning withdrawal shall be taken by the authority competent under section 3. This shall also apply when the administrative act to be withdrawn has been issued by another authority.

Section 49 Revocation of a legal administrative act

(1) A lawful, non-beneficial administrative act may, even after it has become non-appealable, be revoked wholly or in part with effect for the future, except when an administrative act of like content would have to be issued or when revocation is not allowable for other reasons.

(2) A lawful, beneficial administrative act may, even when it has become non-appealable, be revoked in whole or in part with effect for the future only when:

1. revocation is permitted by law or the right of revocation is reserved in the administrative act itself;

2. the administrative act is combined with an obligation which the beneficiary has not complied with fully or not within the time limit set;

3. the authority would be entitled, as a result of a subsequent change in circumstances, not to issue the administrative act and if failure to revoke it would be contrary to the public interest;

4. the authority would be entitled, as a result of an amendment to a legal provision, not to issue the administrative act where the beneficiary has not availed himself of the benefit or has not received any benefits derived from the administrative act and when failure to revoke would be contrary to the public interest, or

5. in order to prevent or eliminate serious harm to the common good. Section 48 paragraph 4 applies mutatis mutandis.

(3) A lawful administrative act which provides for a one-time or a continuing payment of money or a divisible material benefit for a particular purpose, or which is a prerequisite for these, may be revoked even after such time as it has become non-appealable, either wholly or in part and with retrospective effect,

1. if, once this payment is rendered, it is not put to use, or is not put to use either without undue delay or for the purpose for which it was intended in the administrative act;

2. if the administrative act had an obligation attached to it which the beneficiary either fails to satisfy or does not satisfy within the stipulated period. Section 48 paragraph 4 applies mutatis mutandis.

(4) The revoked administrative act shall become null and void with the coming into force of the revocation, except where the authority fixes some other date.

(5) Once the administrative act has become non-appealable, decisions as to revocation shall be taken by the authority competent under section 3. This shall also apply when the administrative act to be revoked has been issued by another authority.

(6) In the event of a beneficial administrative act being revoked in cases covered by paragraph 2, nos. 3 to 5, the authority shall upon application make good the disadvantage to the person affected deriving from his reliance on the continued existence of the act to the extent that his reliance merits protection. Section 48, paragraph 3, third to fifth sentences shall apply as appropriate. Disputes concerning compensation shall be settled by the ordinary courts.

Section 49a Reimbursement, interest

(1) Where an administrative act is either withdrawn or revoked with retrospective effect, or where it becomes invalid as a result of the occurrence of a condition which renders it null and void, any payments or contributions which have already been made shall be returned. The amount of such a reimbursement shall be stipulated in a written administrative act.

(2) The amount to be reimbursed, excepting interest, is governed by the relevant provisions of the Civil Code on surrendering undue enrichment. The beneficiary is not entitled to claim that enrichment no longer exists where he was either aware of the circumstances which led to the administrative act being withdrawn, revoked or becoming invalid, or failed as a result of gross negligence to be aware of this.

(3) Interest shall be due on the amount to be reimbursed from the date on which the administrative act becomes invalid at a rate of 5 (five) per cent per annum above the currently valid Discount Rate of the German Federal Bank [Deutsche Bundesbank]. The payment of interest may be waived where the beneficiary cannot be held responsible for the circumstances which led to the administrative act being withdrawn, revoked or becoming invalid and repays the amount in full within the time limit stipulated by the authority.

(4) If a reimbursement is not put to use upon receipt immediately and for the intended purpose, the payment of interest may be demanded at the level stated in paragraph 3, first sentence for the period up to the date at which it is put to its designated use. The same shall apply as far as a reimbursement is claimed, even when other funds are to be used proportionally or preferentially. The provisions of section 49, paragraph 3, first sentence, no. 1 remain unaffected.

Section 50 Withdrawal and revocation in proceedings for a legal remedy

Section 48, paragraph 1, second sentence and paragraphs 2 to 4 and section 49, paragraphs 2 to 4 and 6 shall not apply when a beneficial administrative act which has been contested by a third party is annulled during a preliminary procedure, or during proceedings before the administrative court, and the annulment operates in favour of the third party.

Section 51 Resumption of proceedings

(1) The authority shall, upon application by the person affected, decide concerning the annulment or amendment of a non-appealable administrative act when:

1. the material or legal situation basic to the administrative act has subsequently changed to favour the person affected;

2. new evidence is produced which would have meant a more favourable decision for the person affected;

3. there are grounds for resumption of proceedings under section 580 of the Code of Civil Procedure.

(2) An application shall only be acceptable when the person affected was, without grave fault on his part, unable to enforce the grounds for resumption in earlier proceedings, particularly by means of a legal remedy.

(3) The application must be made within three months, this period to begin with the day on which the person affected learnt of the grounds for resumption of proceedings.

(4) The decision regarding the application shall be made by the authority competent under section 3; this shall also apply when the administrative act which is to be anulled or amended was issued by another authority.

(5) The provisions of section 48, paragraph 1, first sentence and of section 49, paragraph 1 shall remain unaffected.

Section 52 Return of documents and other materials

When an administrative act has been revoked or withdrawn and appeal is no longer possible, or the administrative act is ineffective or no longer effective for other reasons, the authority may require such documents or materials as have been distributed as a result of the administrative act, and which serve to prove the rights deriving from the administrative act or its exercise, to be returned. The holder and, where this person is not the owner, also the owner of these documents or materials are obliged to return them. However, the holder or owner may require that the documents or materials be handed back to him once the authority has marked them as invalid. This shall not apply to materials for which such a marking is impossible or cannot be made with the necessary degree of visibility or permanence.

Division 3: Legal effects of an administrative act on the statute of limitations

Section 53 Suspension of the statute of limitations by administrative act

(1) An administrative act which is issued in order to determine or enforce the claim of a legal entity under public law suspends the statute of limitations in respect of the claim. This suspension shall continue until the administrative act has become non-appealable or 6 months after it has been otherwise settled.

(2) If an administrative act has become non-appealable within the meaning of paragraph 1, the time limit shall be set at 30 years. As far as the administrative act involves a claim to regularly recurring payments due in the future, the time limit that applies to this claim shall remain in force.

Part IV: Agreement under public law

Section 54 Admissibility of an agreement under public law

A legal relationship under public law may be constituted, amended or annulled by agreement (agreement under public law) in so far as this is not contrary to legal provision. In particular, the authority may, instead of issuing an administrative act, conclude an agreement under public law with the person to whom it would otherwise direct the administrative act.

Section 55 Compromise agreements

The authority may conclude an agreement under public law within the meaning of section 54, second sentence, which eliminates an uncertainty existing even after due consideration of the facts of the case or of the legal situation by mutual yielding (compromise) if the authority considers the conclusion of such a compromise agreement advisable in order to eliminate the uncertainty.

Section 56 Exchange agreements

(1) An agreement under public law within the meaning of section 54, second sentence and under which the party to the agreement binds himself to give the authority a consideration may be concluded when the consideration is agreed in the contract as being for a certain purpose and serves the authority in the fulfilment of its public tasks. The consideration must be in proportion to the overall circumstances and be materially connected with the contractual performance of the authority.

(2) Where a claim to the performance of the authority exists, only such considerations may be agreed which might form the subject of an additional stipulation under section 36, were an administrative act to be issued.

Section 57 Written form

An agreement under public law must be in written form except where another form is prescribed by law.

Section 58 Agreement of third parties and authorities

(1) An agreement under public law which infringes upon the rights of a third party shall become valid only when the third party gives his agreement in writing.

(2) If an agreement is concluded instead of an administrative act, the issuing of which by law would require the acceptance, agreement or approval of another authority, the agreement shall not become valid until the other authority has collaborated in the form prescribed.

Section 59 Invalidity of an agreement under public law

(1) An agreement under public law shall be invalid when its invalidity derives from the appropriate application of provisions of the Civil Code.

(2) An agreement within the meaning of section 54, second sentence shall also be invalid when:

1. an administrative act with equivalent content would be invalid;

2. an administrative act with equivalent content would be unlawful not merely for a deficiency in procedure or form under section 46, and this fact was known to the parties;

3. the conditions for conclusion of a compromise agreement were not fulfilled and an administrative act with similar content would be unlawful not merely for a deficiency in procedure or form under section 46;

4. the authority requires a consideration which is not permissible under section 56.

(3) If only a part of the agreement is invalid, it shall be invalid in its entirety, unless it can be assumed that it would also have been concluded without the part which is invalid.

Section 60 Adaptation and termination in special cases

(1) If the circumstances which determined the content of the agreement have altered since the agreement was concluded so substantially that one party to the agreement cannot reasonably be expected to adhere to the original provisions of the agreement, this party may demand that the content of the agreement be adapted to the changed conditions or, where such adaptation is impossible or not reasonably to be expected of the other party, may terminate the agreement. The authority may also terminate the agreement in order to avoid or eliminate grave

harm to the common good.

(2) Termination must be in written form, except where the law prescribes another form. Reasons for termination must be stated.

Section 61 Submission to immediate enforcement

(1) Any party to an agreement may submit to immediate enforcement deriving from an agreement under public law within the meaning of section 54, second sentence. The authority must in this case be represented by the head of the authority, his general deputy or a member of the civil service qualified for judicial office or fulfilling the requirements of section 110, first sentence of the German Judiciary Act.

(2) The federal law on administrative enforcement shall apply mutatis mutandis to agreements under public law within the meaning of paragraph 1, first sentence when the party entering upon the agreement is an authority within the meaning of section 1, paragraph 1, no. 1. If a natural or legal person under private law or an association not having legal capacity effects enforcement for a monetary claim, section 170, paragraphs 1 to 3 of the Code of Administrative Court Procedure shall apply mutatis mutandis. If enforcement is designed to obtain performance, suffering or non-performance of an action against an authority within the meaning of section 1, paragraph 1, no. 1, section 172 of the Code of Administrative Court Procedure shall again apply as appropriate.

Section 62 Supplementary application of provisions

As far as sections 54 to 61 do not provide otherwise, the remaining provisions of this Act shall apply. The provisions of the Civil Code shall also additionally apply as appropriate.

Part V: Special types of procedures

Division 1: Formal administrative proceedings

Section 63 Application of provisions concerning formal administrative proceedings

(1) Formal administrative proceedings pursuant to this Act take place when required by law.

(2) Formal administrative proceedings are governed by sections 64 to 71 and, unless they provide otherwise, the other provisions of this Act.

(3) Notice under section 17, paragraph 2, second sentence and the requirement under section 17, paragraph 4, second sentence shall be publicly announced in formal administrative proceedings. Public announcement shall be effected when the notification or the requirement is published by the authority in its official bulletin and also in local daily newspapers which circulate widely in the district in which the decision may be expected to have its effects.

Section 64 Form of applications

If formal administrative proceedings require an application, this shall be made in writing or be recorded in writing by the authorities.

Section 65 Participation of witnesses and experts

(1) In formal administrative proceedings witnesses are obliged to give evidence and experts to provide opinions. The provisions of the Code of Civil Procedure regarding the obligation to give evidence as a witness or to furnish an opinion as an expert, the rejection of experts and the hearing of statements by members of the civil service as witnesses or experts shall apply mutatis mutandis.

(2) If witnesses or experts refuse to give evidence or to furnish an opinion in the absence of any of the grounds referred to in sections 376, 383 to 385 and 408 of the Code of Civil Procedure, the authority can ask the administrative court competent in the area in which the witness or expert has his domicile or normal residence to take evidence. If the domicile or normal residence of the witness or expert is not at a place where there is an administrative court or specially constituted chamber, the competent municipal court may be requested to take the evidence. In making its request the authority must state the subject of the examination and the names and addresses of those concerned. The court shall inform those concerned of the dates on which evidence will be

taken.

(3) If the authority considers it advisable for statements to be made under oath in view of the importance of the evidence of a witness or of the opinion of an expert, or in order to ensure that the truth is told, it may request the court competent under paragraph 2 to administer the oath.

(4) The court shall decide as to the legality of a refusal to give evidence or an opinion or to take the oath.

(5) An application under paragraph 2 or 3 to the court may be made only by the head of an authority, his general deputy or a member of the civil service qualified for judicial office or fulfilling the conditions of section 110, first sentence of the German Judiciary Act.

Section 66 Obligation to hear participants

(1) In formal administrative proceedings the participants shall be afforded the opportunity of making a statement before a decision is taken.

(2) Participants shall be afforded an opportunity of attending hearings of witnesses and experts and inspecting the locality concerned and of asking pertinent questions. They shall be furnished with a copy of any opinion existing in written or electronic form.

Section 67 Need for an oral hearing

(1) The authority shall decide after an oral hearing, to which the participants shall be invited in writing on due notice. The invitations should point out that if a participant fails to appear, the discussions can proceed and decisions be taken in his absence. If more than 50 invitations must be sent, this may be done by public announcement. Public announcement shall be effected by publishing the date of the hearing at least two weeks beforehand in the official bulletin of the authority, and also in the local daily newspapers with wide circulation in the district in

which the decision may be expected to have its effect, reference being accordingly made to the third sentence. The period referred to in the fifth sentence shall be calculated from the date of publication in the official bulletin.

(2) The authority may reach a decision without an oral hearing when:

1. an application is fully complied with by agreement between all concerned;

2. within the period set for this purpose no party has entered opposition to the intended measure;

3. the authority has informed the participants that it intends to reach a decision without an oral hearing and no participant opposes this within the period set for this purpose;

4. all participants have agreed to waive the hearing;

5. an immediate decision is necessary because of the risk involved in delay.

(3) The authority shall pursue proceedings so as to ensure that if possible the matter can be settled in one session.

Section 68 Conduct of oral hearings

(1) The oral hearing shall not be public. It may be attended by representatives of the supervisory authority and by persons working with the authority for training purposes. The person in charge of the hearing may admit other people if no participant objects.

(2) The person in charge of the hearing shall discuss the matter with the parties concerned. He shall endeavour to clarify applications which are unclear, to see that relevant applications are made, inadequate statements supplemented and that all explanations necessary to ascertain the facts of the case are given.

(3) The person in charge of the hearing shall be responsible for keeping order. He may have persons who do not observe his orders removed. The hearing may be continued without such persons.

(4) A written record shall be made of the oral hearing and must contain the following information:

1. place and date of the hearing,

2. the names of the person in charge of the hearing and of the participants, witnesses and experts appearing,

3. the subject of the inquiry and the applications made,

4. the chief content of statements by witnesses and experts,

5. the result of any visit to the location concerned.

The written record shall be signed by the person in charge of the hearing and, where the services of such a person are used, by the person keeping the written record. Inclusion in a document attached in the form of an appendix and designated as such shall be equivalent to inclusion in a written record of the hearing. The record of the hearing shall make reference to the appendix.

Section 69 Decisions

(1) The authority shall take its decision having considered the overall result of proceedings.

(2) Administrative acts which conclude the formal proceedings must be in written form, must contain a statement of grounds and be sent to the participants; in cases referred to in section 39, paragraph 2, nos. 1 and 3, no statement of grounds is required. An electronic administrative act as described in sentence 1 shall be provided with a permanently verifiable qualified electronic signature. Where more than 50 notifications have to be sent, this may be replaced by public announcement. Public announcement shall be effected by publishing the operative part of the decision in the official bulletin of the authority, and also in the local daily newspapers with circulation in the district in which the decision may be expected to have its effect. The administrative act shall be deemed to have been delivered two weeks from the day of publication in the official bulletin, which fact shall be included in the announcement. After public announcement has been made and until the period for appeal has expired, the administrative act may be requested in writing or electronically by the participants, which fact shall also be included in the announcement.

(3) If formal administrative proceedings are concluded in another manner, those concerned shall be informed. If more than 50 notifications have to be sent, this may be replaced by public announcement; paragraph 2, fourth sentence shall apply mutatis mutandis.

Section 70 Contesting the decision

No examination in preliminary proceedings is required before an action is brought before the administrative court against an administrative act issued in formal administrative proceedings.

Section 71 Special provisions governing formal proceedings before committees

(1) If the formal administrative procedure takes place before a committee (section 88), each member shall be entitled to put relevant questions. If a participant objects to a question, the committee shall decide as to the question’s admissibility.

(2) Only committee members who have attended the oral hearing may be present during discussions and voting. Other persons who may attend are those employed for training purposes by the authority forming the committee, subject to the chairman’s approval. The results of the voting must be recorded.

(3) Any participant may reject a member of the committee who is not entitled to take part in the administrative proceedings (section 20) or who may be prejudiced (section 21). A rejection made before the oral hearing must be explained in writing or recorded. The explanation shall not be acceptable if the participant has attended the oral hearing without making known his reasons for rejection. Decisions as to rejection shall be governed by section 20, paragraph 4, second to fourth sentences.

Division 1a: Procedures dealt with by a single authority

Section 71a Applicability

(1) Where it is stipulated by law that an administrative procedure may be dealt with by a single authority, the provisions of this division and, where they do not stipulate otherwise, the remaining provisions of this law shall apply.

(2) The duties pursuant to section 71 b paragraphs 3, 4 and 6, section 71 c paragraph 2 and section 71 e shall be incumbent on the competent authority even in cases where the applicant or the person who is under an obligation to notify, addresses himself directly to the competent authority.

Section 71b Procedure

(1) The single authority shall receive notices, applications, statements of intent and documents and shall transfer them immediately to the competent authorities.

(2) On the third day following receipt by the single authority, notices, applications, statements of intent and documents shall be deemed received by the competent authority. Time limits shall be deemed observed if the notice, application, statement of intent or document is received in good time by the single authority.

(3) If a notice, application or statement of intent fixes a time limit within which the competent authority is to take action, the competent authority shall issue a receipt. The receipt shall indicate the date on which the notice, application or statement of intent was received by the single authority and state the time limit, the preconditions for fixing the time limit and the legal consequences resulting from expiry of the time limit and the legal remedy available.

(4) If the notice or application is incomplete, the competent authority shall immediately request the applicant or the person who has filed the notice to submit the missing documents. The request shall contain a reference pointing out that the time limit pursuant to paragraph 3 is fixed by the receipt of the complete documentation. The date on which the subsequently submitted documents are received by the single authority shall be confirmed to the applicant or the person who has filed the notice.

(5) To the extent that the single authority is involved in the handling of the procedure, notices by the competent authority to the applicant or the person who has filed a notice should be passed on through the single authority. Upon the request of the person for whom it is intended, an administrative act shall be made known immediately to him by the competent authority.

(6) A written administrative act shall be deemed notified one month after posting if posted to a foreign address. Section 41, paragraph 2, third sentence shall apply mutatis mutandis. The applicant or the person who has filed a notice must not be required to appoint an authorized recipient pursuant to section 15.

Section 71c Duty to provide information

(1) Upon request, the single authority shall immediately provide information on the relevant regulations, the competent authorities, the access to public registers and data bases, the procedural rights available and the institutions which support the applicant or the person who has filed a notice in taking up or exercising his activity. It shall immediately inform the applicant or the person who has filed a notice if such a request is too unspecific.

(2) Upon request, the competent authorities shall immediately provide information on the relevant regulations and their customary interpretation. Encouragements and information required pursuant to section 25 shall be provided immediately.

Section 71d Mutual Support

Together, the single authority and the competent authorities shall strive for an orderly and expeditious handling of the procedure; all single authorities and competent authorities shall be supported in these efforts. The competent authorities shall make available to the single authority in particular the necessary information concerning the status of the procedure.

Section 71e Electronic Procedure

Upon request, the procedure under this division shall be handled electronically. The provisions under section 3 a, paragraph 2, second and third sentence and paragraph 3 shall remain unaffected.

Division 2: Procedures for planning approval

Section 72 Application of provisions on planning approval procedures

(1) Where the law requires proceedings for planning approval, these shall be governed by sections 73 through 78 and, unless these provide otherwise, by the remaining provisions of this Act. Section 51 and sections 71a to 71e shall not apply and section 29 shall apply with the condition that files shall be open to inspection at the due discretion of the authority.

(2) Notice under section 17, paragraph 2, second sentence and the requirement under section 17, paragraph 4, second sentence shall be publicly announced in planning approval proceedings. Public announcement shall be effected by the authority publishing the notification or the requirement in its official bulletin and also in local daily newspapers which circulate widely in the district in which the project may be expected to have its effect.

Section 73 Hearings

(1) The project developer shall submit the plan to the hearing authorities to enable the hearing to be held. The plan shall comprise the drawings and explanations to clarify the project, the reasons behind it and the land and structures affected.

(2) Within one month of receiving the complete plan the hearing authorities shall gather the opinions of those authorities whose spheres of competence are affected by the project and shall make the plan available for inspection in those communities on which the project is likely to have an impact.

(3) Within three weeks of receiving the plan, the communities referred to in paragraph 2 shall make the plan available for inspection for a period of one month. This procedure may be omitted where those affected are known and are given the opportunity to examine the plan during a reasonable period.

(3a) The authorities referred to in paragraph 2 shall report their opinions within a period to be stipulated by the hearing authority, and not to exceed three months. Comments made after the date set for discussion shall be disregarded, unless the matters raised are already or should already have been known to the planning approval authority or have a bearing on the legality of the decision.

(4) Any person whose interests are affected by the project may, up to two weeks after the end of the inspection period, lodge objections to the plan in writing or in a manner to be recorded with the hearing authority or with the community. In the case referred to in paragraph 3, second sentence, the period for lodging objections shall be determined by the hearing authority. Following the closing date for lodging objections, no objections shall be allowed except those which rest on specific titles enforceable under private law. This fact shall be noted in the announcement

of the inspection period or in the announcement of the closing date for lodging objections.

(5) Those communities in which the plan is to be made public shall give advance notice of the fact according to local custom. The announcement shall state:

1. where and for what period the plan is open to inspection;

2. that any objections must be lodged with the authorities mentioned in the announcement within the time limit set for that purpose;

3. that if a participant fails to attend the meeting for discussion, discussions may proceed without him;

4. that:

a) those persons who lodge objections may be informed of the dates of meetings for discussion by public announcement,

b) the notification of decisions on objections may be replaced by public announcement, if more than 50 notifications have to be made or served. Persons affected who do not reside locally but whose identity and residence are known or can be discovered within a reasonable period shall, at the instigation of the hearing authority, be informed of the plan’s being made available for inspection, with reference to sentence 2.

(6) Following the closing date for lodging objections, the hearing authority shall discuss those objections made to the plan in good time, and the opinions of the authorities with regard to the plan, with the project developer, the authorities, the persons affected by the plan and those who have lodged objections to it. The date of the meeting for discussion must be announced at least a week beforehand in the manner usual in the district. The authorities, the project developer and those who have lodged objections shall be informed of the date set for discussion of the plan. If apart from notifications to authorities and the project developer more than 50 notifications must be sent, this may be replaced by public announcement. Public announcement shall be effected, notwithstanding sentence 2, by publishing the date of the meeting for discussion in the official journal of the hearing authority, and also in local daily newspapers with wide circulation in the district in which the

project may be expected to have its effect. The period referred to in the second sentence shall be calculated from the date of publication in the official bulletin. In

other respects, the discussion shall be governed by the provisions concerning oral hearings in formal administrative proceedings (section 67, paragraph 1, third sentence, paragraph 2, nos. 1 and 4 and paragraph 3, and section 68) as appropriate. Discussion shall be concluded within three months of the closing date for lodging objections.

(7) Notwithstanding the provisions of paragraph 6, second to fifth sentences, the date of the meeting for discussion may already be fixed in the announcement in accordance with paragraph 5, second sentence.

(8) If a plan already open for inspection is to be altered, and if this means that the sphere of competence of an authority or the interests of third parties are affected for the first time or more greatly than hitherto, they shall be informed of the changes and given the opportunity to lodge objections or state their points of view within a period of two weeks. If the change affects the territory of another community, the altered plan shall be made available for inspection in that community; paragraphs 2 to 6 shall apply as appropriate.

(9) The hearing authority shall issue a statement concerning the result of the hearing and shall send this, together with the plan, the opinions of the authorities and those objections which have not been resolved, to the planning approval authority, if possible within one month of the conclusion of the discussion.

Section 74 Decisions on planning approval, planning consent

(1) The planning authority shall consider and decide on the plan (planning approval decision). The provisions concerning decisions and contesting decisions in formal administrative proceedings (sections 69 and 70) shall apply.

(2) The planning approval decision shall contain the decision of the planning approval authority concerning the objections on which no agreement was reached during discussions before the hearing authority. It shall impose upon the project developer the obligation to take measures or to erect and maintain structures or facilities necessary for the general good or to avoid detrimental effects on the rights of others. Where such measures or facilities are impracticable or irreconcilable with the project, the person affected may claim reasonable monetary compensation.

(3) Where it is not yet possible to make a final decision, this shall be stated in the planning approval decision; the project developer shall at the same time be required to submit in good time any documents still missing or required by the planning approval authority.

(4) The planning approval decision shall be sent to the project developer, those people known to be affected by the project and those people whose objections have been dealt with. A copy of the decision, together with advice on legal remedies and a copy of the plan as approved, shall be open for inspection in the communities concerned for two weeks, the place and time at which the plan may be inspected being made known in accordance with local custom. With the end of the inspection period, the other parties affected shall be regarded as having been notified, which fact shall be made known in the announcement.

(5) If apart from the project developer more than 50 notifications have to be made under paragraph 4, this may be replaced by public announcement. Public announcement shall be effected by

publishing the operative part of the decision of the planning approval authority, as well as advice on legal remedies and a reference to the fact that the plan is open to public inspection pursuant to paragraph 4, second sentence, in the official bulletin of the competent authority, and also in local daily newspapers with wide circulation in the district in which the project may be expected to have its effect. Any impositions shall be indicated. At the end of the period of public inspection, those affected by the decision and those who have lodged objections to it shall be regarded as having been notified, which fact shall be indicated in the public announcement. Between the time of the public announcement and the end of the period during which legal remedies may be sought, those affected by the decision and those who have lodged objections may make written requests for copies of the decision; this shall likewise be indicated in the public announcement.

(6) Planning consent may be issued in place of a planning approval decision where

1. there is no impairment of the rights of others or where those affected have declared in writing that they consent to the utilisation of their property or of some other right, and

2. agreement has been reached with those public agencies whose spheres of competence are affected.

Planning consent has the same legal effects as planning approval except for the predetermining legal effect with regard to later expropriation; the granting of such consent shall not be governed by the provisions on planning approval procedures. Re-examination in preliminary proceedings is not required prior to the filing of an action with the administrative court. Section 75, paragraph 4 applies mutatis mutandis.

(7) Planning approval and planning consent are not required in cases of minor significance. Such cases are deemed to exist where

1. no other public concerns are affected, or the required decisions on the part of authorities have already been taken and are not in conflict with the plan, and

2. rights of others are not affected, or the relevant agreements have been reached with those affected by the plan.

Section 75 Legal effects of planning approval

(1) Planning approval has the effect of establishing the admissibility of the project, including the necessary measures subsequently to be taken in connection with other installations and facilities, having regard to all public interests affected thereby. No other administrative decisions, in particular consent issued under public law, grants, permissions, authorisations, agreements or planning approvals are required. Planning approval legally regulates all relationships under public law between the project developer and those affected by the project.

(1a) Flaws in the weighing of public and private interests touched by the project shall be deemed to be significant only where they have clearly exerted an influence on the outcome of deliberations. Significant flaws in weighing public and private interests shall result in the annulment of the decision on planning approval or of planning consent only where such flaws cannot be rectified by means of modifications to the plan or by a supplementary procedure.

(2) Once the decision on planning approval has become nonappealable, no claims to stop the project, to remove or alter structures or to stop their use will be allowed. If unforeseeable effects of

the project, or of structures built in accordance with the approved plan, on the rights of another become apparent only after the plan has become nonappealable, the person affected may demand that measures be undertaken or structures erected and maintained to counteract the detrimental effects. Such measures shall be imposed on the project developer by a decision of the planning approval authority. If such measures or the installation of such structures are impracticable or irreconcilable with the project, a claim may be made for reasonable monetary compensation. If measures or structures within the meaning of sentence 2 become necessary because of changes which occur on a neighbouring piece of land after the planning approval procedure has been concluded, the costs arising shall be borne by the owners of the adjacent land, unless such changes are the result of natural occurrences or force majeure; sentence 4 shall not apply.

(3) Applications seeking to enforce claims to the erection of installations or structures or for reasonable compensation in accordance with paragraph 2, second and fourth sentences shall be made to the planning authority in writing. These shall only be acceptable if made within three years of the date on which the person affected became aware of the detrimental effects of the project resulting from the non-appealable plan, or of the installations. They may not be made once thirty years have passed from the creation of the situation shown in the plan.

(4) If work is not commenced on the project within five years of the plan becoming non-appealable, it shall become invalid.

Section 76 Changes to the plan before the project is finished

(1) If the approved plan is to be changed before the project is finished, a new approval procedure shall be required.

(2) If the changes to the plan are of negligible importance, the planning approval authorities may waive the need for a new procedure

where the interests of others are not affected or where those affected have agreed to the change.

(3) If, in the cases referred to in paragraph 2, or in other cases of a negligible change to a plan, the planning approval authority conducts an approval procedure, then no hearing and no public notification of the planning approval decision is required.

Section 77 Annulment of a planning approval decision

If a project on which work has commenced is permanently abandoned, the planning authority shall annul the approval decision. The annulment decision shall require the project developer to restore the status quo ante or to take other suitable measures where these are necessary for the common good or in order to avoid detrimental effects to the rights of others. If such measures are required because changes occur on an adjacent piece of land after the planning approval procedure has been completed, the planning approval authority may decide to require the project developer to undertake suitable measures. However, the cost thereof shall be borne by the owner of the adjacent piece of land except where such changes are the result of natural occurrences or force majeure.

Section 78 Coincidence of several projects

(1) If a number of independent plans, the execution of which requires planning approval procedures, coincide in such a manner that only a uniform decision is possible for these projects or parts thereof,

and if at least one of the planning approval procedures is regulated by federal law, these projects or parts thereof shall be the subject of one single planning approval procedure.

(2) Competence and procedures shall be governed by the regulations relating to planning approval proceedings prescribed for that structure or facility which affects a larger number of relationships under public law. In the event of uncertainty as to which legal provision applies, the Federal Government shall decide, if according to the relevant provisions a number of federal authorities within the remit of a number of supreme federal authorities are competent; otherwise, the highest competent federal authority shall decide. Where there is uncertainty as to which legal provision applies, and if according to the relevant provisions, a federal authority and a Land authority are competent, and the highest federal and Land authorities are unable to reach an agreement, the federal and Land governments shall come to an agreement as to which legal provision shall apply.

Part VI: Procedures for legal remedies

Section 79 Remedies for administrative acts

Formal remedies for administrative acts shall be governed by the Code of Administrative Court Procedure and its implementing legislation, except where the law determines otherwise; in other respects, the provisions of this Act shall apply.

Section 80 Refund of costs in preliminary proceedings

(1) Where an appeal is successful, the legal entity whose authority issued the disputed administrative act shall refund to the person appealing the costs involved in the legal prosecution or defence proceedings. This shall also apply where the appeal is unsuccessful only because the infringement of a prescription as to form or procedure is insignificant under section 45. Where the appeal is unsuccessful, the person entering the appeal shall refund to the authority which issued the disputed administrative act the costs involved in the necessary legal prosecution or defence proceedings. This shall not apply when an appeal is entered against an administrative act which was issued:

1. in the context of an existing or previously existing relationship of employment or official service under public law, or

2. in the context of an existing or previously existing official duty or an activity which may be performed instead of the legally required official duty.

Costs arising due to the fault of a person entitled to a refund shall be borne by him; the fault of a representative shall be regarded as that of the person represented.

(2) The fees and expenses of a lawyer or other authorised representative in preliminary proceedings are refundable when the use of a lawyer’s services was necessary.

(3) The authority making the decision as to costs shall upon application fix the amount of the costs to be refunded. If a committee or advisory board (section 73, paragraph 2 of the Code of Administrative Court Procedure) has made a decision as to costs, the fixing of costs shall be the responsibility of the authority forming the committee or advisory board. The decision as to costs shall also determine whether the services of a lawyer or other authorised representative were necessary.

(4) Paragraphs 1 to 3 shall apply also to preliminary proceedings connected with measures relating to the legal status of the judiciary.

Part VII: Honorary positions, committees

Division 1: Honorary positions

Section 81 Application of the provisions on honorary positions

Sections 82 to 87 govern participation in an administrative procedure in an honorary capacity as far as legal provisions do not provide for exceptions.

Section 82 Duty of honorary participation

A duty to assume an honorary position shall exist only when the duty is provided for by legislation.

Section 83 Performance of an honorary function

(1) A person acting in an honorary capacity shall perform the function in a conscientious and impartial manner.

(2) Upon assuming the position, he shall be expressly obliged to carry out the tasks in a conscientious and impartial manner and to observe secrecy. A written record of the conferring of this obligation shall be made.

Section 84 Duty to observe secrecy

(1) A person acting in an honorary capacity shall observe secrecy concerning the official business revealed to him, even after the honorary activity has ended. This obligation shall not apply to official communications or facts which are common knowledge or whose significance requires no obligation of secrecy.

(2) A person acting in an honorary capacity may not without permission testify in court, make statements outside court or make declarations concerning the official business he is obliged to keep secret.

(3) Permission to testify as a witness may be refused only if the testimony would be detrimental to the welfare of the Federation or a Land, or would seriously endanger or significantly interfere with the execution of public duties.

(4) If the person who holds an honorary position is a participant in a legal action before a court, or if his arguments serve to protect legitimate personal interests, permission to testify may be refused, even if the conditions in paragraph 3 are fulfilled, only if required by a compelling public interest. If permission is refused, the person holding an honorary position shall be provided protection as allowed by the public interest.

(5) Permission granted in cases covered in paragraphs 2 to 4 shall be granted by the specially competent supervisory authority which appointed the person to the honorary position.

Section 85 Compensation

A person who performs an honorary function shall have a right to compensation for necessary expenses and for loss of earnings.

Section 86 Dismissal

Persons who have been appointed to perform an honorary function can be dismissed for good cause by the authority which appointed them. Good cause is shown in particular if the person who holds an honorary position

1. violates his duty in a grievous manner or proves to be unworthy;

2. is no longer capable of performing the duties in a proper manner.

Section 87 Administrative offences

(1) An administrative offence shall be deemed to have been committed by any person who

1. does not assume an honorary position although he is obliged to do so;

2. lays down an honorary position which he is obliged to assume without a valid and sufficient reason.

(2) The administrative offence can be punished by a fine.

Division 2: Committees

Section 88 Application of the provisions on

Sections 89 to 93 shall govern committees, advisory councils and other collegial bodies (committees) when they participate in an administrative procedure, unless legislation provides otherwise.

Section 89 Order of meetings

The chairman shall open, preside over and close the meeting; he shall be responsible for order.

Section 90 Quorum

(1) Committees shall constitute a quorum when all the members have been duly summoned and more than half, but at least three members who are eligible to vote are present. Resolutions may also be passed in a written procedure if no committee member objects.

(2) If a matter of official business has been deferred due to lack of a quorum and the committee is again summoned to take action on the same subject, the committee shall constitute a quorum regardless of the number of committee members present as long as this provision has been indicated in the summons.

Section 91 Adoption of resolutions

Resolutions shall be adopted by a majority of votes. In the case of a parity of votes, the chairman shall have the casting vote as long as he is eligible to vote; otherwise a parity of votes shall be considered a rejection of the resolution.

Section 92 Elections by committees

(1) Unless a member of a committee objects, voting shall be carried out by voice or signal, or else by ballot. A secret ballot shall be used if a committee member so requests.

(2) The candidate who receives the greatest number of votes cast shall be elected. In the case of a parity of votes, the official in charge of the election shall decide the election by drawing a lot.

(3) Unless otherwise resolved by unanimous vote, the election procedure to be used when a number of similar elective positions are to be filled shall be the d'Hondt highest number procedure. In the event of the highest number being shared, the official in charge of the election shall determine the allocation of the last elective position by drawing a lot.

Section 93 Minutes

Minutes of the meeting shall be kept. The minutes must contain the following information:

1. time and place of the meeting,

2. name of the chairman and of the committee members present,

3. subject dealt with and the motions presented,

4. resolutions passed,

5. election results.

The minutes shall be signed by the chairman and by a secretary if a secretary has been called in to keep the minutes.

Part VIII: Concluding provisions

Section 94 Delegation of municipal duties

By legal ordinance, the governments of the Länder shall be able to transfer duties which are incumbent on the communities under sections 73 and 74 of this Act to other local authorities, or to an administrative community. The legal provisions of Länder which already contain the appropriate regulations shall not be affected.

Section 95 Special arrangements for defence matters

If a state of defence or a state of tension has been declared, the following can be dispensed with in case of defence matters: hearing of participants (section 28, paragraph 1); confirmation in writing of an administrative act (section 37, paragraph 2, second sentence); written statement of grounds for an administrative act (section 39, paragraph 1). In derogation of section 41, paragraph 4, third sentence, an administrative act shall be deemed to have been promulgated in these cases on the day

following the date of announcement. The same shall be valid for the other applicable regulations pursuant to Article 80a of the Basic Law.

Section 96 Transitional proceedings

(1) Proceedings which have already begun shall be concluded according to the provisions of this Act.

(2) The admissibility of a legal remedy for decisions issued before this Act came into force shall be governed by the provisions formerly in effect.

(3) Time limits which began before this Act came into force shall be calculated according to the provisions formerly in effect.

(4) The provisions of this Act shall be valid for the refund of costs in preliminary proceedings if the preliminary proceedings have not been concluded before this Act enters into force.

Section 97 Amendment of the Code of Administrative Court Procedure

[*Verwaltungsgerichtsordnung*] – revoked

Section 98 Amendment of the Law Concerning Federal Long-Distance Highways

[Bundesfernstraßengesetz] (revoked)

Section 99 Amendment of the Immissions Act [Bundes-Immissionsschutzgesetz] (revoked)

[*Bundes-Immissionsschutzgesetz*] – revoked

Section 100 Regulations under state law

The Länder shall be able to make laws which

1. provide for a regulation pursuant to section 16;

2. stipulate that for planning approval procedures executed on the basis of provisions under state law, the legal effects of section 75, paragraph 1, first sentence shall also be valid vis-à-vis the necessary decisions under federal law.

Section 101 City-state clause

The Senates of the Länder Berlin, Bremen and Hamburg are authorized to regulate local competence in derogation of section 3 in accordance with the particular administrative structure of their respective states.

Section 102 Transitional rule on section 53

Article 229, section 6, paragraphs 1 to 4 of the Introductory Act of the Civil Code applies mutatis mutandis to the use of section 53 in the version effective 1 January 2002.

Section 103 Entry into force