

# DIBt

Agreement relating to  
Deutsches Institut für Bautechnik  
and  
Statutes of  
Deutsches Institut für Bautechnik

As per: 01 October 2008

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**Law**

**relating to Deutsches Institut für Bautechnik**

of 22nd April 1993

*Gesetz zum Abkommen zur Änderung des Abkommens über das Deutsche Institut für Bautechnik (DIBt Agreement as amended) on 13 May 2006 (Gesetz und Verordnungsblatt für Berlin 2006, p. 438)*

The Berlin House of Representatives has adopted the following Law:

§ 1

The Agreement relating to Deutsches Institut für Bautechnik including the Arbitration Agreement on the settlement of disputes arising out of the Agreement relating to Deutsches Institut für Bautechnik - Annex – is approved.

§ 2

The Institut für Bautechnik (IfBt) established by the Law of 9th July 1968 (GVBl. S. 917) shall be continued as Deutsches Institut für Bautechnik (Institute) in accordance with the Agreement (DIBt Agreement) stated in § 1. The provisions of the Agreement form part of this Law.

§ 3

The *Senatsverwaltung*<sup>\*)</sup> responsible for construction is given authority to confer power of decision to the Institute by means of statutory instruments pursuant to Article 2 paragraph 6 of the DIBt Agreement.

§ 4

(1) Pursuant to the Law on Fees and Contributions of 22 May 1957 (GVBl. p. 516), last amended by the Law of 30th October 1969 (GVBl. p. 2252), the Institute charges fees and may claim for reimbursement of expenses.

(2) Fees that deviate from § 6 of the Law on Fees and Contributions shall be stipulated by the Statutes

§ 5

The *Senatsverwaltung*<sup>\*)</sup> responsible for construction publishes the Statutes of the Institute in the *Amtsblatt für Berlin*.

§ 6

This Law shall come into operation on 1st January 1993. At the same time the Law relating to the Institut für Bautechnik of 9th July 1968 (GVBl. p. 917) shall cease to have effect.

The foregoing Law is hereby promulgated.

The Governing Mayor

D i e p g e n

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\*) modified by law on the DIBt Agreement as amended on 13 May 2006 (GVBl. p. 438)

Annex

**Agreement relating to Deutsches Institut für Bautechnik  
(DIBt Agreement)**

The Federal Republic of Germany  
– hereinafter referred to as "Federal Government" –  
and  
the Land Baden-Württemberg,  
the Freistaat Bayern,  
the Land Berlin,  
the Land Brandenburg,  
the Freie Hansestadt Bremen,  
the Freie und Hansestadt Hamburg,  
the Land Hessen,  
the Land Mecklenburg-Vorpommern,  
the Land Niedersachsen,  
the Land Nordrhein-Westfalen,  
the Land Rheinland-Pfalz,  
the Saarland,  
the Freistaat Sachsen,  
the Land Sachsen-Anhalt,  
the Land Schleswig-Holstein  
the Land Thüringen  
– hereinafter referred to as "Laender" –

conclude, subject to the consent of their legislative bodies, as far as this is prescribed by the Constitution, the following Agreement relating to Deutsches Institut für Bautechnik:

Article 1

**General**

- (1) The Land Berlin continues the Institut für Bautechnik as Deutsches Institut für Bautechnik - DIBt – (hereinafter referred to as "Institute") as an incorporated public law institution having legal capacity, resident in Berlin.
- (2) The Institute has the task of uniform fulfilment of technical tasks in the field of public law.
- (3) In performing the tasks as stated in this Agreement under the Council Directive of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (Official Journal of the EC N° L 40 p. 12) – Construction Products Directive – the parties involved co-operate closely and on a basis of mutual trust. It is their aim to keep up and improve the level of technical requirements achieved in the Federal Republic of Germany based on regulations under public law and in the field of public contracts. Insofar as the Institute is entrusted with comparable tasks related to construction products, which have to be fulfilled under other Directives of the European Communities, sentences 1 and 2 shall apply accordingly.
- (4) The Institute has the right of self-government within the scope of provisions following hereinafter.
- (5) The Institute has the right to establish civil servant status. The Institute's civil servants are indirect officials of the Land Berlin. Conditions of service for workers and salaried employees of the Institute shall be regulated according to the provisions for workers and employees of the Land Berlin.

## Article 2

### Tasks

- (1) The Institute has the task to
  1. grant European technical approvals and to publish them stating subject and main contents;
  2. grant *allgemeine bauaufsichtliche Zulassungen* and to keep and publish registers of the approvals granted;
  3. prepare notifications for the adoption of technical building regulations;
  4. initiate, award, deliver expert opinion on, and attend to technical studies and investigations in the field of construction including building research contracts and to assess and analyze building research reports;
  5. deliver expert reports in an individual case, for instance concerning the use of construction products, at the request of one or several persons involved;
  6. keep registers of testing laboratories, inspection bodies and certification bodies, thereby making a difference between: according to *Bauproduktengesetz* and according to *Landesbauordnungen*.
- (2) The Institute has the task to give technical advice to the authorities responsible for market surveillance within the meaning of section 13 *Bauproduktengesetz* ('Construction Products Law') as well as to coordinate the market surveillance proceedings of the Laender. For that purpose the Institute can commission experts' opinions and tests. \*)
- (3) In addition the Institute has the task to draw up and publish the *Bauregellisten* A and B as well as the List concerning construction products which do not require a proof of the fitness for use. Publication of the lists requires the consent of the highest construction supervision authorities of the Laender.
- (4) Another of the Institute's tasks is to prepare,
  1. the recognition of testing laboratories, inspection bodies and certification bodies according to the *Bauproduktengesetz*,
  2. recognition of testing laboratories, inspection bodies and certification bodies as well as corresponding recognition of authorities under the *Landesbauordnungen*, and
  3. judgements on requests for type approvals,unless it has competence according to paragraph 6,
- (5) The Institute can,
  1. subject to another decision taken by the *Verwaltungsrat*, participate in the preparation of technical guidelines and rules at national, European and international level, and
  2. with consent of the *Verwaltungsrat*, work on committees of the Commission of the European Communities as well as on other European and international committees.
- (6) The individual Laender can additionally confer powers on the Institute concerning
  1. recognition of testing laboratories, inspection bodies and certification bodies under the *Bauproduktengesetz* and their control,
  2. recognition of testing laboratories, inspection bodies and certification bodies and the corresponding recognition of authorities under the *Landesbauordnung* and their control,
  3. granting of type approvals, and

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\*) Article 2(2) added by law on the DIBt Agreement as amended on 13 May 2006 (GVBl. p. 438)

4. official decisions related to construction products under legal provisions which serve to transpose further directives of the European Communities.

Statement for the record: Re Article 2 paragraph 1 N° 1

For granting European technical approvals the Institute will ask bodies designated by the Federal Government to prepare draft approvals as far as such approvals affect essential concerns of the Federal Government in complying with tasks carried out under federally owned management or on behalf of the Federal Government. Details are laid down in the Internal Regulations.

Article 3

**Tasks executed on behalf of the Federal Government**

- (1) Under § 7(2) *Bauproduktengesetz* the Institute, on behalf of the Federal Government, participates in the organization in which are united, under the Construction Products Directive, approval bodies designated by the Member States of the European Communities.
- (2) Within the framework of participation in the organization of the approval bodies, the Institute has in particular the task
  1. to participate in the drafting of guidelines for European technical approvals and in comments by the approval bodies under Article 9.2 of the Construction Products Directive, and
  2. to provide translations of European technical approvals granted by other approval bodies under the Construction Products Directive, or to confirm the technical accuracy of translations submitted; to evaluate these approvals, and to notify the *Bundesministerium für Raumordnung, Bauwesen und Städtebau* of the subject of approval, its main contents and the reference (§ 7(3) *Bauproduktengesetz*) and to keep lists of the European technical approvals granted.
- (3) Within the scope of executing the tasks under paragraphs 1 and 2 the *Institute is subject to the authority of the Federal Government; the authority to give instructions is exercised by the Bundesministerium für Raumordnung, Bauwesen und Städtebau*. The Institute keeps the Federal Ministry informed of the activities according to paragraph 1.

Article 4

**Representation of the Institute in the organization of the approval bodies**

- (1) Within the meaning of Article 3(2) the Institute is represented by its President in the organization of the approval bodies.
- (2) In cases covered by paragraph 1 the Institute can also be represented by a member of the *Verwaltungsrat*, appointed by the Federal Government in general or individually, where
  1. matters are concerned, which are important with regard to political integration and to foreign policy or which considerably affect the concerns of the Federal Government, and where
  2. the Federal Government requires this by designation of the issues.

In this case the member of the *Verwaltungsrat* can be spokesman in the organization.

- (3) The President and the member of the *Verwaltungsrat* can appoint a representative.
- (4) Concerning negotiations on and harmonization of guidelines for European technical approvals under Article 11 of the Construction Products Directive and on the common understanding of assessment procedure for a European technical approval following Article 9.2. of the Construction Products Directive the Federal Government shall, in performing its authority to give instructions, respond to a majority position of the Laender, as far as the guideline or the common understanding of assessment has to take account of material requirements regulated under Land law or requirements of the field of activities performed by the Land itself, unless deviating from the position of the Laender is necessary for reasons of foreign policy and political integration. Where a guideline or a common understanding of assessment has to take account of requirements of both the Federal Government and the Laender, the Federal Government and the Laender shall strive to reach an agreement. If no agreement has been reached the matter shall be decided by the Federal Government. In doing so account shall be taken of the interests of the Laender.

## Article 5

### Supervision on points of law and in technical matters

- (1) The *Senatsverwaltung für Bau- und Wohnungswesen* of the Land Berlin performs the supervision on points of law of the Institute.
- (2) In fulfilling the tasks under Article 2 (1., 2., 3., 5. and 6.) the Institute is subject to supervision in technical matters by the *Senatsverwaltung für Bau- und Wohnungswesen*.
- (3) Each supreme building authority of a Land can ask the *Senatsverwaltung für Bau- und Wohnungswesen* for supervisory measures (in technical matters) according to paragraph 2. The *Senatsverwaltung für Bau- und Wohnungswesen* will comply with this request upon completion of four weeks at the latest, unless the majority of the supreme building authorities of the Laender objects to the execution of such measures during this period of time.
- (4) The Federal Government can ask the *Senatsverwaltung für Bau- und Wohnungswesen* for measures (in technical matters) according to paragraph 2 in terms of a decision in an individual case serving to implement the *Bauproduktengesetz*, a decision
  1. which is or was necessary for reasons of foreign policy and of political integration or
  2. which would hamper fulfillment of a task carried out under the federally owned administration or on behalf of the Federal Government.

The *Senatsverwaltung für Bau- und Wohnungswesen* will comply with this request after four weeks at the latest, unless at least two thirds of all Laender object to the execution of such measures during this period of time. However, in cases of sentence 1 N° 1 the Laender may oppose only, if the conditions stated therein do not exist; in cases of sentence 1 N° 2 they may only do so if essential interests of the Laender are affected.

- (5) In matters under paragraph 2, the President is responsible for opposition notices deviating from § 30 (2) a) of the *Gesetz über die Zuständigkeit in der allgemeinen Berliner Verwaltung (Allgemeines Zuständigkeitsgesetz)* of 2 October 1958 (GVBl. p. 947), last amended by the law of 6 July 1989 (GVBl. p. 1289).

#### Statement for the record: Re Article 5 paragraph 4 sentence 2

In cases of special urgency the Federal Government has the right to ask for an adequate reduction of the period of time mentioned in Article 5(4) sentence 2. The Laender will comply with such a request as far as possible.

## Article 6

### Bodies

The bodies of the Institute are:

1. *Verwaltungsrat*,
2. President.

## Article 7

### Verwaltungsrat

- (1) The *Verwaltungsrat* decides on all principal affairs, defines the guidelines of activity of the Institute and supervises the President.
- (2) The *Verwaltungsrat* is responsible for the following matters, in particular:
  1. Promulgation of statutes;
  2. appointment of the President and his deputy;
  3. preparation of and amendment to the budget, staff plan included, and general instructions for execution of the budget;

4. acquisition of land and construction works;
5. contractual obligations exceeding EUR 50,000.--;
6. setting up of *Ausschüsse für Grundsatzfragen* and their composition, depending on the technical fields concerned;
7. giving consent according to Art. 2(5)2, Art. 9(1) sentence 6;
8. objection to, modification and cancellation of resolutions passed by the *Ausschüsse für Grundsatzfragen* according to Art. 9(3);
9. setting up and staffing of *Sachverständigenausschüsse*;
10. enactment of the Internal Regulations.

Statutes require the approval of the *Senatsverwaltung für Bau- und Wohnungswesen des Landes Berlin*.

(3) The *Verwaltungsrat* acts as highest administrative authority for the civil servants of the Institute. In so far as permitted by the provisions of the *Landesbeamtenengesetz* he can delegate powers to the president in individual personnel matters. The *Verwaltungsrat* appoints the civil servants unless exercise of this power is delegated to the president. The *Verwaltungsrat* is also the highest administrative authority of the president.

(4) The *Verwaltungsrat* is composed of one representative each of the Laender, appointed by the Ministry responsible for construction supervision, a further representative of the Land Berlin, appointed by the *Senatsverwaltung für Finanzen*, and seven representatives of the Federal Government each appointed by the *Bundesministerium für Raumordnung, Bauwesen und Städtebau*, *Bundesministerium für Finanzen*, *Bundesministerium für Wirtschaft*, *Bundesministerium für Arbeit und Sozialordnung*, *Bundesministerium für Verkehr*, *Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit*, *Bundesministerium für Post und Telekommunikation*, respectively; a deputy shall be appointed for each member of the *Verwaltungsrat*.

(5) Each member of the *Verwaltungsrat* has one vote. With at least half of the members present the *Verwaltungsrat* is competent to pass resolutions. Resolutions are adopted by a simple majority of votes of the members present, unless otherwise stipulated in this Agreement. In the event of a tie the motion shall be considered as rejected. Resolutions relating to the fulfillment of the tasks referred to in Art. 2(1)1, 2(5)2, and 2(6)1 require at least a three quarters majority. Voting by proxy is authorized among the members appointed by the Federal Government; however, no more than three proxies may be held by one member.

(6) Written resolutions are possible if not more than three members object; paragraph 5 shall apply accordingly.

(7) The *Verwaltungsrat* elects a chairman and a deputy from among their members for two years and adopts Internal Regulations.

(8) The *Verwaltungsrat* shall hold a regular session at least twice a year. On the request of at least three members the *Verwaltungsrat* shall meet for a special session. The Chairman calls the meeting and presides at it. He draws up the agenda.

## Article 8

### **President**

(1) The Institute is managed by the President. The President executes the resolutions taken by the *Verwaltungsrat*. Within the scope of directives given by the *Verwaltungsrat* he takes care of the allocation of tasks and is responsible for the proper course of business. The President acts as administrative authority for the other civil servants of the Institute. He deals with current business of the Institute and represents the Institute in and out of court.

(2) The President and his deputy are appointed by a three quarters majority of all voting members of the *Verwaltungsrat*. The President is an appointed civil servant on a limited appointment for a term of office of 12 years. The appointment requires the consent of the *Senatsverwaltung für Bau- und Wohnungswesen* of the Land Berlin. The decision on a further staffing of the position must have been made at the latest three months prior to the expiration of the term of office of the President.

(3) The President must have the qualifications necessary for managing the Institute and particular aptitudes in the field of construction engineering. His deputy or the head of "Administration" must be eligible for the office of a judge.

(4) The President, unless prevented by conflicting interests, attends the meetings of the *Verwaltungsrat* in an advisory capacity. He has to inform the *Verwaltungsrat* on any important matter. He is bound to furnish information on any matter to the *Verwaltungsrat* at any time.

(5) Details concerning the position and the tasks of the President and his deputy are established by the *Verwaltungsrat*.

Statement for the record: Re Article 8 paragraph 3 sentence 2

This provision does not affect existing employment.

Article 9

***Ausschüsse für Grundsatzfragen***

(1) *Ausschüsse für Grundsatzfragen* are set up at the Institute. Each *Grundsatzausschuss* is composed of one representative each of the Laender and of up to ten representatives appointed by the Federal Government. The Federal Ministries' technical departments concerned shall be adequately involved. Nominations of the Laender representatives have to be confirmed by the conference of the ministers concerned. The chairman can invite further guests to attend. The invitation of permanent guests requires the consent of the *Verwaltungsrat*. The President or a member of the Institute nominated by the President acts as chairman.

(2) The *Ausschüsse für Grundsatzfragen* have the task of giving advice to the Institute on fundamental technical and legal questions. They also discuss the drawing up of the lists referred to in Article 2(3).

(3) Taking of a decision concerning recommendations on draft guidelines for European technical approvals is the responsibility of the *Ausschüsse für Grundsatzfragen*. The President informs the Federal Government of these decisions. He may deviate from these decisions only with the consent of the *Verwaltungsrat*. The *Verwaltungsrat* can criticize, modify and revoke the decisions. Article 3(3) sentence 1 and Article 4(4) remain unaffected.

(4) The *Ausschüsse für Grundsatzfragen* take their decisions by a simple majority of the members present. In case of a tie the decision is rejected.

Article 10

**Expert committees**

(1) Expert committees are set up at the Institute for giving advice on technical matters. On the committees are experts from the authorities of the Laender and the Federal Government as well as science, commerce and industry. The representatives of the Federal Government are nominated by the Federal Government. Details are laid down in the Statutes.

(2) As a rule, the President gives the relevant expert committee a share in granting European technical approvals. The same applies to cases of a common understanding of assessment procedure of the approval bodies according to Article 9(2) Construction Products Directive.

Statement for the record: Re Article 10 paragraph 2

(1) Refraining from participation shall only be done in very exceptional cases. Such, for example, can be the case if it concerns the request by a manufacturer for a European technical approval which was granted already earlier to another manufacturer with very much the same contents.

(2) Concerning construction products which fall under § 24 of the *Gewerbeordnung*, the *Gerätesicherheitsgesetz* as well as under the *Gefahrstoffverordnung* or other provisions of industrial safety regulations the *Zentralstelle der Länder für Sicherheitstechnik* (ZLS) shall be involved before granting a European technical approval if this is asked for by a member of an expert committee.

## Article 11

### **Financing**

- (1) Pursuant to its Statutes the Institute charges fees, reimbursement of outlays and compensation for services rendered.
- (2) The Federal Government reimburses any of the Institute's costs not covered otherwise resulting from the performance of the tasks stated in Article 3 respecting the basic conditions of profitability and thrift; which includes costs for participation of the committees under Article 9(3) and Article 10(4) sentence 2, as well as the expenditure incurred by the Institute in placing requests for experts' opinion from third parties with the Federal Government's consent. Details are defined in an agreement which requires consent of the Ministers of Finance of the Laender. Until the taking effect of this agreement, until 31 December 1994 at the latest, the Federal Government performs interim payments of reimbursement of expenses in quarterly installments of that amount which had been paid for the fiscal year 1990 under Article 7 of the *Abkommen über die Errichtung und Finanzierung des Instituts für Bautechnik* of the year 1968.
- (3) The financial requirements for equipping and maintaining the Institute, not covered in another way, will be shared out between the Laender. The fixing of the amount necessary for that requires the consent of two third of the Ministries of Finance of the Laender.
- (4) The pro rata contribution between the Laender is calculated proportionally, two thirds to the tax revenue and one third proportionally to its population. The meaning of tax revenue is the revenue equalization based on the tax revenue of the Laender. Tax revenue may increase or decrease by the amounts which the Laender receive within the scope of the revenue equalization (between financially weak and financially strong public law entities) from other Laender or pay to other Laender. Decisive are the tax revenue and the total population determined by the Federal Statistical Office for 30 June of the financial year preceding the financial year for two years.
- (5) Deviating from paragraph 4, the following shall apply until a revenue equalization between the Laender is established as defined in Article 3 of the Unification Treaty: Only the financial allocation caused by the new Laender and the Eastern part of Berlin will be raised by the new Laender and Berlin proportional to their population.
- (6) The contribution of the Laender fall due in the course of each financial year in four installments on 1st January, 1st April, 1st July, and 1st October according to the budget estimates. Overpayments and shortfalls vis-à-vis the financial needs resulting from the annual account will be balanced with the first installment of the following financial year.

#### Statement for the record: Re Article 11 paragraph 2

Costs to be reimbursed are in particular

1. travel expenses,
2. personnel costs, pro rata corresponding to the expenditure of time, and
3. a corresponding proportion to the overheads of the Institute,
4. the Institute's contribution to the European Organisation for Technical Approvals (EOTA).

## Article 12

### **Managing of the budget**

- (1) Unless otherwise provided for in this Agreement, the Institute is independent in managing its budget.
- (2) Managing of the budget is executed in accordance with the provisions on budget law in force in the Land Berlin. The budget shall be drawn up and executed according to the basic conditions of profitability and thrift.
- (3) Managing of the budget and financial management are subject to be audited by the Audit Office of Berlin and with regard to reimbursement of expenses under Article 11(2) to be audited by the Federal Audit Office. The audit reports shall be submitted to the President, the members of the Verwaltungsrat, the Ministries of Finance of the Laender, and the Federal Ministry of Finance.

## Article 13

### Arbitration clause

- (1) Disputes arising out of this Agreement shall be decided by an arbitral tribunal. The Arbitration Agreement enclosed shall apply.
- (2) Before bringing any dissent between the Federal Government and the Laender before the tribunal the competent departmental heads of the Bundesministerium der Finanzen and the Bundesministerium für Verkehr as well as three departmental heads of the competent Ministries of the Laender, appointed by the ARGEBAU for four years, shall first of all make every effort to reach a unanimous solution. If the departmental heads do not reach an agreement by majority the State Secretaries of the Ministries stated shall try to reach a unanimous solution.
- (3) A decision by majority taken by the departmental heads or the State Secretaries shall be considered as a binding interpretation of this Agreement.

## Article 14

### Duration of Agreement

- (1) This Agreement is of unlimited duration. Subject to one year's notice it can be terminated by either party to the end of the calendar year by means of a written notice vis-à-vis the *Senatsverwaltung für Bau- und Wohnungswesen* of the Land Berlin and by notifying the others concerned at the same time, by 31 December 1994 for the first time.
- (2) The party giving notice remains obligated to contribute to the financial needs of the Institute as long as and insofar as the financial needs have become necessary due to his participation. Distribution of the Institute's disposable assets will not take place.
- (3) Has the Agreement been terminated by more than two thirds of the parties the Institute shall be dissolved. The *Senatsverwaltung für Bau- und Wohnungswesen* will perform the dissolution. If the Institute's assets do not suffice for coverage the parties are obligated to refund all costs arising from the dissolution on a pro rata basis. Assets remaining after dissolution will be apportioned among the parties, unless otherwise agreed upon. Decisive for calculating the shares is the proportion of the financial contribution under Article 11 on an average of the last five years before termination of the Agreement.

## Article 15

### Entry into force<sup>\*)</sup>

- (1) This Agreement shall come into operation on 1st January of the year which will follow the year in which the last of the deeds executed by the parties was sent to the *Senatsverwaltung für Bau- und Wohnungswesen* of the Land Berlin.
- (2) Upon the entry into force of this Agreement the Agreement on the foundation and financing of the *Institut für Bautechnik* from 1968 shall cease to be effective, except for its Article 2. Article 2 of the Agreement from 1968 shall apply in addition to Article 2 of this Agreement until that date at which all Laender will have transposed their building regulations according to the Construction Products Directive.

#### Statement for the record: Re Article 15 paragraph 1

The parties agree that already upon entry into effect of the *Bauproduktengesetz* the provisions of Article 2(5)2., Articles 3, 4, and 5(4), Article 9(3), Article 10(2), sentence 2, and as of 1st January 1993 Article 11(1) and (2) shall apply.

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<sup>\*)</sup> Note: According to the publication on the entry into force of the DIBt Agreement as amended, dated 29 January 2008, the DIBt Agreement as amended has come into effect on 1 February 2008. (*Gesetz- und Verordnungsblatt für Berlin* 2008, p.20)

Annex to Article 13 of the Agreement on Deutsches Institut für Bautechnik

**Arbitration Agreement  
concerning the settlement of disputes arising out of the  
Agreement relating to Deutsches Institut für Bautechnik**

The Federal Republic of Germany

and

the Land Baden-Württemberg,  
the Freistaat Bayern,  
the Land Berlin,  
the Land Brandenburg,  
the Freie Hansestadt Bremen,  
the Freie und Hansestadt Hamburg,  
the Land Hessen,  
the Land Mecklenburg-Vorpommern,  
the Land Niedersachsen,  
the Land Nordrhein-Westfalen,  
the Land Rheinland-Pfalz,  
the Saarland,  
the Freistaat Sachsen,  
the Land Sachsen-Anhalt,  
the Land Schleswig-Holstein  
the Land Thüringen

enter into the following Arbitration Agreement:

Article I

All legal disputes arising out of the Agreement on Deutsches Institut für Bautechnik are subject to the decision by an arbitral tribunal.

The provisions of *Zehntes Buch* of the *Zivilprozessordnung* shall be applied to the proceedings.

Article II

The arbitral tribunal is composed of the President of the *Oberverwaltungsgericht* Berlin as presiding judge and of two members of the *Verwaltungsrat* of Deutsches Institut für Bautechnik who are jointly appointed by the disputing parties, but who must not be members. In case that due to the situation of the dispute such a nomination is not possible the presiding judge shall designate two members from the circle of honorary members of the *Oberverwaltungsgericht*. His nomination is final.

Should the President of the *Oberverwaltungsgericht* reject assumption to preside the President of the *Bundesverwaltungsgericht* shall designate the presiding judge.

**Statutes of  
Deutsches Institut für Bautechnik**

of 24 September 1993 (Amtsblatt für Berlin p. 3101)  
taking account of the amendments  
of 27 January 1995 (Amtsblatt für Berlin p. 243),  
26 May 1995 (Amtsblatt für Berlin p. 1690),  
29 March 1996 (Amtsblatt für Berlin p. 1086),  
20 December 1996 (Amtsblatt für Berlin p. 4406),  
1st August 1997 (Amtsblatt für Berlin p. 2814),  
3rd November 2000 (Amtsblatt für Berlin p. 4228),  
21 December 2001 (Amtsblatt für Berlin p. 5622),  
20 June 2003 (Amtsblatt für Berlin p. 2486),  
28 May 2004 (Amtsblatt für Berlin p. 2217) and  
18 August 2008 (Amtsblatt für Berlin p. 2120).

Based on Article 7(2) N° 1 of the Agreement on Deutsches Institut für Bautechnik (DIBt Agreement) the Verwaltungsrat of Deutsches Institut für Bautechnik (DIBt) adopts the following Statutes:

**§ 1  
General**

- (1) Deutsches Institut für Bautechnik (Institute) is an incorporated public law institution having legal capacity, resident in Berlin (Article 1(1) DIBt Agreement).
- (2) The inscription on the Institute's seal reads "Deutsches Institut für Bautechnik".

**§ 2  
Ausschüsse für Grundsatzfragen**

(1) According to Article 7(2) N° 6 and Article 9 of the DIBt Agreement the following *Ausschüsse für Grundsatzfragen (GA)* are set up at the Institute:

1. *Grundsatzausschuss* for questions along inter-disciplinary lines concerning proof of fitness for use and verification of serviceability (GA 1). This committee is also responsible for:
  - a) discussing the making up of the lists under Article 2(2) of the DIBt Agreement and
  - b) decision-making on recommendations concerning drafts of guidelines for European technical approvals.
2. *Grundsatzausschuss* for advising the Institute on questions dealing with pollution control, public health care and protection against hazards at work (GA 2).
3. *Grundsatzausschuss* for advising the Institute on questions dealing with water and soil protection (GA 3).

(2) When deciding on the composition of the *Grundsatzausschüsse*, the Verwaltungsrat shall ensure adequate participation of representatives, in particular from:

Building and housing, economy, transportation, pollution control, public health care, protection against hazards at work, water resources management, waste, post and telecommunications.

**§ 3  
Sachverständigenausschüsse**

(1) According to Article 7(2) N° 9 and Article 10 of the DIBt Agreement *Sachverständigenausschüsse* are set up at the Institute for the following tasks:

1. *Sachverständigenausschüsse* for discussing guidelines for technical approvals and principles of technical approvals for the granting of European technical approvals and national technical approvals<sup>\*)</sup> (*Ausschüsse*),

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<sup>\*)</sup> Until modification of all Landesbauordnungen questions regarding Prüfzeichen will be dealt with by the committees responsible for the granting of national technical approvals.

2. *Sachverständigenausschüsse* preparing the granting of European technical approvals and national technical approvals as well as advising comments on draft European technical approvals by approval bodies of other Member States of the EC (*B-Ausschüsse*).
3. *Sachverständigenausschuss* for general questions concerning the recognition of testing laboratories, inspection bodies and certification bodies on the basis of the Bauproduktengesetz and the Landesbauordnungen,
4. *Sachverständigenausschüsse* for discussing requests for the recognition of testing laboratories, inspection bodies and certification bodies.

Further *Sachverständigenausschüsse* can be set up by the *Verwaltungsrat* for other tasks. Federal departments and departments of the *Laender* concerned shall adequately be represented on the *Sachverständigenausschüsse*.

(2) The President can propose to the *Verwaltungsrat* that he sets up or dissolves *Sachverständigenausschüsse*.

(3) The *Sachverständigenausschüsse* must have a chairman and can have a vice-chairman, whereas *Sachverständigenausschüsse A* must have a vice-chairman. The tasks of the chairmen are specified in the Internal Regulations for *Sachverständigenausschüsse*.

(4) The President appoints the chairmen, their deputies and the members based on resolutions taken by the *Verwaltungsrat* under due consideration of designations by the Federal Government. The term of office of the experts is five years. It expires at the latest at the end of that year during which the expert reaches the age of 68. It will also expire once the expert has terminated his/her contractual relationship with the institution having suggested him/her. The *Verwaltungsrat* can with the approval of the sending body permit exceptions to sentences 3 and 4. For important reasons the appointment can be revoked before expiration of the term of office.

(5) On a *Sachverständigenausschuss A* there shall be at least seven but not more than 18 members.

(6) On *Sachverständigenausschüsse B* there shall be at least three but not more than ten members. *Sachverständigenausschüsse B* are set up from the circle of members of the *Sachverständigenausschuss A* responsible for the respective special field concerned.

(7) The *Sachverständigenausschüsse* can, in agreement with the President, call in further experienced persons as guests. Representatives of the responsible highest Land authorities and Federal departments are entitled to participate in the meetings of the *Sachverständigenausschüsse* without right to vote.

(8) The experts serve in an honorary capacity. The *Verwaltungsrat* decides concerning reimbursement of travel expenses and other outlay.

(9) A *Sachverständigenausschuss* has a quorum if at least half of the members are present. Decisions are taken by a simple majority of the votes cast of the members present. Taking of a decision by means of written procedure is permissible; sentences 1 and 2 shall apply accordingly.

(10) The Institute manages the affairs of the *Sachverständigenausschüsse*, coordinates their activities and informs them whenever and as deemed necessary for the subject matter on the activities of the other *Sachverständigenausschüsse*.

(11) The President can decide that several *Sachverständigenausschüsse* under her/his chairmanship, the chairmanship of her/his deputy, or under the chairmanship of the head of a division of the Institute discuss and resolve jointly. They have a quorum if at least half of the members of each committee are present. Paragraph 9 sentence 2 shall apply accordingly.

(12) The President can decide that in order to coordinate the activities of the *Sachverständigenausschüsse* the chairmen and their deputies of the *Sachverständigenausschüsse* discuss and resolve jointly under her/his chairmanship. The assembly has a quorum if half of this group of persons is present. Paragraph 7 sentence 1 and paragraph 9 sentence 2 shall apply accordingly.

(13) The President shall perform joint discussions according to paragraphs 11 and 12 if so demanded by a *Sachverständigenausschuss*; she/he must perform them if so demanded by the *Verwaltungsrat*.

(14) The President draws up Internal Regulations for the *Sachverständigenausschüsse* which shall also include provisions on joint discussions under paragraphs 11 and 12 as well as on the hearing of an applicant.

#### **§ 4 Fees and Outlays**

- (1) For official acts within the scope of tasks under Article 2 of the DIBt Agreement the Institute shall charge administrative fees in accordance with paragraphs 2 to 9 and according to the list of fees given in Annex 1.
- (2) For official acts the scope of which is fixed in the list of fees, the fees shall be rated depending on
  - a) the importance of the subject and the economic benefit for the persons involved,
  - b) the extent of the official act and the difficulties arising on performing the official act (work time spent); when rating according to the work time spent the hourly rate per hour of work can be based on as given in Annex 1 Subheading 5,
  - c) the economic situation of the debtor of fees.
- (3) Is the request to perform an official act rejected one tenth up to eight tenth of the total amount of the fees shall be charged. These fees shall be reimbursed or be credited with the fees for the official act desired if the rejection order is annulled in opposition proceedings or legal proceedings in an administrative court. Is the request rejected due to insufficiency fees shall not be charged.
- (4) Is the request to perform an official act withdrawn one tenth up to six tenth of the total amount of the fees shall be charged if work on the subject matter has already begun with but the official act not having been completed yet.
- (5) Costs for checking of calculations relating to static equilibrium and of engineering drawings, costs for tests and experts' opinion, the opinion by the *Sachverständigenausschüsse* excepted, shall be reimbursed as cash expenditures. The same shall apply to travel expenses incurring in an individual case; these can be levied by a percentage of the fees to be paid as a result from the ratio of travel expenses of members of the *Sachverständigenausschüsse* to the receipts realized from fees and compensation for services rendered; decisive is the ratio of the preceding financial year.
- (6) Has an official act due to a contested administrative act been denied or performed against charges, a fee for the objection amounting to the sum earmarked for the administrative act shall be paid so far as the ruling is being kept to. This shall also apply to objections to administrative acts of officially recognized testing laboratories within the scope of procedure for the granting of national technical test certificates so far as Deutsches Institut für Bautechnik is responsible for issuing objections. Is the objection directed against the demand for payment of fees only a fee amounting to one tenth of the sum in dispute shall be levied.
- (7) The Institute can ask for advances on costs up to the amount of the probable fees and outlays.
- (8) For the leaving of guidelines, registers, approvals and other publications an administrative fee according to the scale of fees of Annex 1 will be collected.
- (9) In all other respects the provisions of the Land law of the Land Berlin shall apply.

**§ 5**  
**Payment for services rendered**

Preparing decisions on

1. the recognition of testing laboratories, inspection bodies and certification bodies according to the Bauproduktengesetz;
2. recognition of testing laboratories, inspection bodies and certification bodies as well as corresponding recognition of authorities under the Landesbauordnungen, and
3. applications for type approvals,

as well as giving expert opinion shall be subject to payment for services rendered according to Annex 2.

§ 4 paragraphs 2 to 5 shall apply accordingly.

The Federal Government and Laender Governments shall not pay for services rendered, unless third parties can be called upon to reimburse payment for services rendered.

**§ 6**  
**Audit of the accounts**

(1) After the end of the financial year the President shall draw up the annual accounts.

(2) The annual accounts shall be checked by an auditor or an auditing company. Keeping of the principle of profitability and thrift shall also be checked as well as the budgetary provisions of the Land Berlin. The right of the Audit Office of Berlin to audit shall remain unaffected.

**§ 7**  
**Entry into force**

These Statutes shall enter into force the date after their publication.

**Annex 1**

**Scale of fees of Deutsches Institut für Bautechnik**

Sub-heading	Object	Fees €
1	<p><i>Allgemeine bauaufsichtliche Zulassungen</i> Approvals of unregulated construction products and types of construction (1) Class 1: Approvals of unregulated construction products if test conditions and requirements relating to construction products are laid down in standards or approval guidelines Period of validity limited to five years</p> <p>Class 2: Approvals of other unregulated construction products as well as other unregulated types of construction the application of which (design and execution) can mainly be assessed according to technical building provisions Period of validity limited to five years</p> <p>Class 3: Approvals of unregulated types of construction and construction products if not covered by Class 2 Period of validity limited to five years</p> <p>(2) Is the period of validity limited to less than five years the fees to be fixed according to paragraph (1) shall lessen by 10 per cent for each year under the five-year period.</p> <p>(3) Where a <i>Zulassungsbescheid</i> covers several types of execution of the approval object the fees to be fixed according to paragraph (1) will be increased by up to 50 per cent for each additional type of execution.</p> <p>(4) Where the decision on the approval in an individual case has required time and effort to an extraordinary extent, fees can be increased of up to the double of the ceiling fees. The debtor shall be heard if such an increase in fees is to be expected.</p>	<p>500 to 15,000</p> <p>1,250 to 17,500</p> <p>2,500 to 30,000</p>
2	<p>European technical approvals</p> <p>a) with guidelines</p> <p>b) for products which differ significantly from technical specifications</p> <p>c) without guidelines</p> <p>Subheading 1 paragraph (2) to paragraph (4) shall apply accordingly</p>	<p>2,500 to 30,000</p> <p>2,500 to 30,000</p> <p>5,000 to 50,000</p>
3	<p>Renewal of period of validity, supplements or amendments to administrative acts under 1 and 2 Subheading 1 paragraph (4) shall apply accordingly</p>	<p>one tenth up to five tenth of the fees given in 1 and 2</p>
4	<p>Recognition of testing laboratories, inspection bodies and certification bodies</p> <p>a) according to the Bauproduktengesetz</p> <p>b) according to Landesbauordnungen</p> <p>c) according to Article 16 of the Construction Products Directive</p> <p>d) amending the recognition</p>	<p>1,000 to 20,000</p> <p>500 to 10,000</p> <p>1,000 to 15,000</p> <p>250 to 5,000</p>

- e) official acts within the scope of reviewing recognized testing laboratories, inspection bodies and certification bodies, revocation of recognitions included.

Per hour of work commenced amounting to 2.2 per cent of the basic monthly salary of a Berlin civil servant, highest classification of grade A15, rounded up to full EURO. The hourly rate will be published in the "Mitteilungen" of Deutsches Institut für Bautechnik.

When fixing the fee the provisions in Subheading 1 paragraphs (2) and (3) shall be applied accordingly.

- 5 Other official acts to the immediate advantage of the interested party as well as information in writing
- 6 Decisions in opposition proceedings
- 7 Leaving of publications

Per hour of work commenced, fee according to Subheading 4, subparagraph e).

One tenth up to ten tenth of the fee fixed for the contested administrative act

**Paper/Offline version**

- a) Approval and inspection guidelines  
b) *Bauaufsichtliche Richtlinien* ('national technical guidelines') by other committees  
c) Information leaflets  
d) Registers (inter alia approvals, *Werkkennzeichen*, manufacturers)  
e) Guidelines for European technical approvals  
f) Guidance papers  
g) Other publications

a) – g)  
5 to 50 per publication

**Online version**

a) – g)  
2 to 50 per publication

- h) *Allgemeine bauaufsichtliche Zulassungen* ('national technical approvals')  
i) European technical approvals granted by DIBt

h) and i)  
5 to 50 per publication

**Annex 2**

**Schedule for the payment of services rendered**

Sub-heading	Object	Payment for services rendered €
1	Preparing decisions on the recognition of testing laboratories, inspection bodies and certification bodies under the <i>Bauproduktengesetz</i> , the recognition of testing laboratories, inspection bodies and certification bodies as well as the corresponding recognition of authorities under the <i>Landesbauordnung</i> and decisions on applications for type approvals as well as giving expert opinions.	Per hour of work commenced amounting to 2.2 per cent of the basic monthly salary of a Berlin civil servant, highest classification of grade A15, rounded up to full EURO. The hourly rate will be published in the "Mitteilungen" of Deutsches Institut für Bautechnik.
2	Dealing with applications requesting to be entered on lists kept at Deutsches Institut für Bautechnik	150 up to 1,500