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Filing of U.S. Property Claims in Eastern Germany

The unification of Germany has expanded the opportunities for American individuals and organizations to make claims for property taken by the former East German communist regime, the German Democratic Republic (GDR),¹ and for property located in Eastern Germany that was taken during the Nazi era. Recent estimates have placed the eventual number of such claims in the several tens of thousands.² Although some deadlines for seeking restitution have passed, as of this writing, most kinds of claims for compensation can still be made. A final deadline for submission of all claims has not yet been set. This article surveys the current status of U.S. claims with respect to property in eastern Germany generally, and examines the new German claims program as it may relate to potential U.S. claimants.

I. Pre-Unification Claims Procedures

A. FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

In 1950, five years after the hostilities of World War II had ceased, Congress passed the International Claims Settlement Act to coordinate and administer the

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This article describes the status of U.S. property claims in Eastern Germany, and the German claims program generally, as of March 1, 1991. Legislative and policy changes occurring after that date and before publication in the fall of 1991 may affect the article's content and conclusions.

1. In this article GDR is used both as a noun and adjective to describe both the former German Democratic Republic and the present eastern territory of the Federal Republic of Germany, which once constituted the GDR.

2. N.Y. Times, Feb. 3, 1991, § 1, at 10, col. 1.

making of certain private property claims by U.S. citizens and nationals against foreign governments.³ In 1954, Congress abolished the War Claims Commission⁴ and transferred the Commission's powers to a new agency, the Foreign Claims Settlement Commission of the United States (the Commission).⁵ The Commission continues to exist as a separate agency within the United States Department of Justice.⁶

As of the mid-1970s, the Commission had dealt with claims of U.S. citizens and nationals against the governments of Bulgaria, the People's Republic of China, Cuba, Czechoslovakia, Hungary, Italy, Poland, Romania, the Soviet Union, and Yugoslavia.⁷ Before the United States established diplomatic relations with the GDR in 1974, citizens and nationals of the United States who qualified under the equalization of burdens laws, enacted by the Federal Republic of Germany (FRG) had, "in some instances, received compensation from that government based on property losses arising in East Germany."⁸ The Commission had also processed claims of U.S. nationals under title II of the War Claims Act of 1948

which arose in certain Eastern European countries, including Germany, during the period beginning September 1, 1939, and ending May 8, 1945, as a result of military operations of war or special measures directed against property because of the enemy character of such property, which was owned at the time by nationals of the United States.⁹

Except for these somewhat narrow measures, the question of U.S. claims against East Germany remained essentially open and unresolved.

The breakthrough came on September 4, 1974, when the United States and the GDR established diplomatic relations.¹⁰ The two governments agreed they would enter into negotiations "for the settlement of claims and other financial and property questions which remained unresolved. . . . Included on the Agenda will be property and other questions which arose prior to or since 1945 which have not otherwise been settled, including losses by victims of Nazism."¹¹ The

3. International Claims Settlement Act of 1949, 22 U.S.C. §§ 1621-1627 (1982). For Rules of Practice, see 45 C.F.R. §§ 500-501 (1990).

4. War Claims Act of 1948, 50 U.S.C. app. § 2017-2017p (1988); see also 45 C.F.R. § 505.1 (1980).

5. 22 U.S.C. §§ 1644a-1644m; see Act of Aug. 9, 1955, ch. 645, § 1; see also Reorg. Plan No. 1 of 1954, 19 Fed. Reg. 3085, 68 Stat. 1279 (1978) (effective July 1, 1954), reprinted in 22 U.S.C. § 1622a.

6. 22 U.S.C. § 1622a.

7. Testimony of J. Raymond Bell, Chairman, Foreign Claims Settlement Commission, Aug. 24, 1976, 1976 U.S. CODE CONG. & ADMIN. NEWS 5588.

8. *Id.* at 5590.

9. *Id.*

10. Agreed Minutes on Negotiations Concerning the Establishment of Diplomatic Relations, with Exchange of Notes, Sept. 4, 1974, 25 U.S.T. 2597, T.I.A.S. No. 7937 (signed at Washington Sept. 4, 1974, and entered into force the same day).

11. See also 1976 U.S. CODE CONG. & ADMIN. NEWS 5583.

legislative outgrowth of these negotiations was the 1976 enactment of "Subchapter VI—Claims Against German Democratic Republic" to the International Claims Settlement Act.¹² This legislation required the Commission to

receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims by nationals of the United States against the German Democratic Republic for losses arising as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property, including any rights or interests therein, owned wholly or partially, directly or indirectly, at the time by nationals of the United States whether such losses occurred in the German Democratic Republic or in East Berlin.¹³

Claims that have been validated by the Commission¹⁴ were then to be certified to the Secretary of the Treasury for payment, which would occur once the United States Department of State had negotiated a lump-sum settlement agreement with the GDR.¹⁵ The Secretary of the Treasury was to be responsible for administering the Claims Fund,¹⁶ and would be required to "deduct from any amounts covered into the Claims Fund, an amount equal to five percentum thereof as reimbursement to the Government of the United States for expenses incurred by the Commission and by the Treasury Department."¹⁷ Essentially, the United States Government's objective is to settle all claims in a lump sum settlement agreement, for which it would receive a five percent user fee for its efforts.

The Commission finished adjudicating such claims in 1981. It received a total of 3,878 claims from a broad spectrum of U.S. corporations, trusts, and individuals.¹⁸ Of these claims, it declared 1,899 valid.¹⁹ Among the more significant American corporate claimants were International Telephone and Telegraph Corporation (\$5.3 million),²⁰ Exxon Corporation (\$4.4 million),²¹ CPC International Inc. (\$3 million),²² Eastman Kodak Company (\$1.3 million),²³ IBM World Trade Corporation (\$1.6 million),²⁴ and Singer International Securities Company (\$1 million).²⁵ Many of these 1,899 claims also carry interest from as

12. Pub. L. No. 94-542, 90 Stat. 2509-2511 (1976) (codified as 22 U.S.C. § 1644a-1644m (1982)).

13. 22 U.S.C. § 1644b.

14. *Id.*

15. 1976 U.S. CODE CONG. & ADMIN. NEWS 5589.

16. 22 U.S.C. §§ 1644a(5), 1644g(a); 31 C.F.R. §§ 250.1-250.7 (1990).

17. 22 U.S.C. § 1644g(b).

18. Schedule of Claims Transmitted for Payment under Pub. L. No. 94-542, Foreign Claims Settlement Commission, Nov. 16, 1981. Before the GDR claims program was established, the Commission estimated that there would be approximately 6,000 claims by American nationals. 1976 U.S. CODE CONG. & ADMIN. NEWS 5587.

19. *Id.*

20. Claim No. G-2401.

21. Claim No. G-2480.

22. Claim No. G-2092.

23. Claim No. G-1069.

24. Claim No. G-3080.

25. Claim No. G-2151.

far back as 1945. The 1,899 claims validated by the Commission and espoused by the United States Government against the GDR were still outstanding and unsettled when the surge toward German unification suddenly erupted in 1989 and 1990.

B. THE GDR CLAIMS PROCEDURE

The present German claims program is a hybrid of the eleventh-hour GDR efforts and post-unification FRG legislation. An understanding of both is therefore essential. The GDR decrees, which have been carried forward and are still in effect, generally establish the basic right to make certain claims. The FRG legislation expands on these rights, and provides the procedural framework for adjudicating these claims.

1. Decree of 27 June 1990

Following the signing on May 18, 1990, of the *Staatsvertrag* (State Treaty),²⁶ which established currency, economic, and social integration of the FRG and the GDR, the GDR on June 27, 1990, took a small step toward a full claims program by passing the narrowly scoped Decree on the Liquidation of Share Rights of Owners Domiciled Outside the German Democratic Republic in the Loan for Redemption of Pre-Currency Reform Credit Balances.²⁷

In 1949, the year the GDR was founded, the Soviet occupation authorities, as part of the Currency Reform of 1948 in their occupation zone, devalued German citizens' pre-May 8, 1945, bank credit balances by converting these balances at an exchange rate of ten to one. To compensate depositors for this reduction in value and expropriation, they established a "loan" and issued "shares" to the affected depositors. Under the terms of this forced loan, the shareholding citizens would be paid back over time. After satisfying certain material and financial conditions, the Soviet occupation authorities paid out these share rights between 1950 and 1972. However, in 1958, for shareholders domiciled outside the GDR, the Communist regime rendered their redemption rights "dormant"—that is, functionally canceled.²⁸

26. *Vertrag über die Schaffung einer Währungs-, Wirtschafts- und Sozialunion zwischen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik* (Treaty on the Achievement of a Currency, Economic, and Social Union Between the Federal Republic of Germany and the German Democratic Republic), 18 May 1990, Bundesgesetzblatt Teil I [BGB1.I] 537.

27. *Verordnung über die Tilgung der Anteilsrechte von Inhabern mit Wohnsitz ausserhalb der Deutschen Demokratischen Republik an der Altguthaben-Ablösungsanleihe vom 27. Juni 1990* (Decree on the Liquidation of Share Rights of Owners Domiciled Outside the German Democratic Republic in the Loan for Redemption of Pre-Currency Reform Credit Balances of June 27, 1990) (Gesetzblatt der DDR Teil I [GB1.I] Nr. 39, at 543) (translation available from the U.S. Department of State LS No. 132839 PH/Germany) [hereinafter Decree of June 27, 1990].

28. The historical background contained in this paragraph is derived from an explanatory "*Information zur Tilgung von Anteilrechten an der Altguthaben-Ablösungsanleihe in der DDR—Ministerium der Finanzen*." The U.S. Department of State's Division of Language Services has trans-

The June 27, 1990, Decree revived and revalidated the redemption rights of these shareholders,²⁹ who had until December 31, 1990, to file for payment³⁰ including interest at three percent³¹ and at an exchange rate of two GDR marks to one deutsche mark of the Federal Republic.³² Payments were due by December 31, 1991.³³ The Decree also barred double recovery by claimants who had been previously compensated by means of an intergovernmental (*zwischenstaatlich*) agreement.³⁴

2. Decree of July 11, 1990

Barely two weeks later, on July 11, 1990, the GDR enacted the much broader and more significant *Verordnung über die Anmeldung vermögensrechtlicher Ansprüche* (Decree on the Registration of Property Claims) (Registration Decree).³⁵ Simply stated, the Registration Decree establishes: that certain claims may be made; the eligibility of claimants (all natural and juridical persons); and some scant procedural guidelines for submission of claims. The Registration Decree focused on claims for assets seized as a result of seven specific GDR statutes.³⁶ The seized assets for which claims could be submitted included "pieces of real property, rights in rem to pieces of real property, movable property, and enterprises and their property which are situated in the territory of the German Democratic Republic . . . [and] credit balances and other claims to payments of money whose debtors have their headquarters or place of residence" in the GDR.³⁷ If the enumerated GDR legislation affected any natural or juridical person or his heirs or assigns, then the affected person had standing to file a claim.³⁸ The Registration Decree sets forth where (in the GDR county or city of the claimant's last residence or where the asset is located),³⁹ and how (in writing, with a detailed description)⁴⁰ claims were to be submitted.

Perhaps more importantly, the Registration Decree included the implicit admission that for four decades the GDR had wrongfully taken private property. "The Decree also applies to assets, including rights to use and enjoyment, which

lated this as "Ministry of Finance—Information—On the Liquidation of Share Rights in the Loan for Redemption of Pre-Currency-Reform Credit Balances in the GDR" LS No. 133043 PH/German.

29. Decree of June 27, 1990, *supra* note 27, preamble.

30. *Id.* § 2(1).

31. *Id.* § 3(1).

32. *Id.* § 3(2).

33. *Id.*

34. *Id.* § 4.

35. *Verordnung über die Anmeldung vermögensrechtlicher Ansprüche*, 11. Juli 1990, GB1.I Nr. 44, at 718 (an English translation is available from the U.S. State Department) [hereinafter Registration Decree].

36. *Id.* § 1(1) (a)–(g).

37. *Id.* § 1(3).

38. *Id.* § 2(1).

39. *Id.* § 2(2).

40. *Id.* §§ 2(2), 4(1).

were acquired by means of unfair practices: e.g., by abuse of power, graft, coercion, or fraudulent misrepresentation on the part of the acquirer, of state agencies, or of third parties."⁴¹ The Registration Decree did not set forth standards determining restitution, compensation, or the extent of damages to which a claimant may be entitled.

Significantly, the Registration Decree did not apply to "claims to assets which were settled on the part of the German Democratic Republic by means of inter-governmental [*zwischenstaatlich*] agreements."⁴² Presumably, property covered in the 1,899 claims validated by the U.S. Foreign Claims Settlement Commission and espoused by the United States Government against the GDR beginning in 1981 is therefore not excluded from the scope of the Decree. Since these U.S. claims have never been settled, U.S. claimants may file anew under the Registration Decree, as is discussed below.⁴³

Four days after the Decree was issued, the FRG and the GDR, on July 15, 1990, issued a "Joint Declaration of the Governments of the Federal Republic of Germany and the German Democratic Republic on the Settlement of Outstanding Issues of Property Rights,"⁴⁴ which clarifies the application of the Registration Decree. This Joint Declaration does not specifically refer to the July 11, 1990, Registration Decree, but because of its timing and content, it is reasonable to utilize the Declaration as a set of principles (benchmarks)⁴⁵ in interpreting the Registration Decree and its legislative intent.

The Declaration expresses several broad principles with respect to property claims in the GDR which the FRG later codified in its claims legislation. First, where possible, restitution, not compensation, is the preferred remedy, unless the claimant chooses compensation, or compensation is otherwise not practicable.⁴⁶ Second, where property was honestly conveyed or rented to GDR citizens, those GDR citizens and tenants are to be protected.⁴⁷ Third, any property seized and held by the GDR in trust is to be returned.⁴⁸ Fourth, compensation, not restitution, would occur where property had been condemned for public use.⁴⁹ Finally,

41. *Id.* § 1(2).

42. *Id.* § 1(4)c.

43. See *infra* note 90 and accompanying text.

44. "Gemeinsame Erklärung der Regierungen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik zur Regelung offener Vermögensfragen," *Pressemitteilung Presse und Informationsamt der Bundesregierung* (Press and Information Service of the FRG Government) 15. Juli 1990 Nr. 257/90 [hereinafter Joint Declaration]. For a translation, see U.S. Department of State, Division of Language Services LS No. 132511 PH/German. English quotations in notes 46–51 and accompanying text are from this translation [hereinafter Translation No. 132511].

45. Joint Declaration, *supra* note 44, Preamble, Translation No. 132511, *supra* note 44.

46. Joint Declaration, *supra* note 44, Para. 3: "As a matter of rule, expropriated real property is returned to its former owners or their heirs." Translation No. 132511, *supra* note 44.

47. Joint Declaration, *supra* note 44, paras. 3.b), 5, 8.

48. *Id.* paras. 2, 6, 12.

49. *Id.* para. 3.a) "The reconveyance of ownership rights to pieces of real property and buildings whose type of use or application have been changed in particular by their having been dedicated to public use, utilized in comprehensive multi-unit [sic] housing and settlement construction, brought

the Declaration clarified a provision in the Registration Decree to the effect that the FRG will not compensate claims arising from expropriations from 1945 to 1949, since these occurred as a result of military occupation by other powers (that is, the Soviet Union) and not the GDR regime.⁵⁰ The exclusion, however, of these 1945–1949 Soviet occupation expropriations has been attacked by several entitled parties in lawsuits brought in the Federal Constitutional Court (*Bundesverfassungsgericht*) in Karlsruhe.⁵¹ As of this writing, no decision has been rendered. An initial deadline of January 31, 1991, was set for submission of claims. On August 21, 1990, a second decree amending the Registration Decree extended the deadline to October 13, 1990.⁵²

II. Post-Unification Claims Procedures

A. LAW GOVERNING THE RESOLUTION OF UNSETTLED PROPERTY ISSUES

On August 31, 1990, the FRG and the GDR signed the Unification Treaty (*Einigungsvertrag*),⁵³ which expressly states that the GDR Registration Decree would remain in effect after unification on October 3, 1990.⁵⁴ Additionally, a new complementary FRG law was to take effect on October 3, 1990, the Law Governing Unsettled Property Issues (Claims Law).⁵⁵ The new law incorporates the July 11, 1990, Registration Decree and some of its standards through numerous references, and at the same time broadens the scope of the entire claims program.

into commercial use or incorporated into a new company is not possible." Translation No. 132511, *supra* note 44.

50. See Joint Declaration, *supra* note 44. Para. 1: "Expropriations on the basis of the law or jurisdiction of the occupying powers (1945 to 1949) can no longer be reversed. The Governments of the Soviet Union and the German Democratic Republic see no possibility of reconsidering the measures taken at that time. The Government of the Federal Republic of Germany takes note of this in view of the historical development. . . ." Translation No. 132511, *supra* note 44; see also Registration Decree, *supra* note 35, § 1(4) (a).

51. See *Das Unrecht Ausgleichen (The Righting of the Wrong)*, DER SPIEGEL, Jan. 21, 1991, at 48.

52. *Zweite Verordnung über die Anmeldung vermögensrechtlicher Ansprüche vom 21. Aug. 1990* (Second Decree on the Registration of Property Claims of Aug. 21, 1990) GB1.1 Nr. 56, at 1260 [hereinafter Property Claims].

53. *Vertrag zwischen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik über die Herstellung der Einheit Deutschlands vom 31. Aug. 1990* (Treaty for the Unification of Germany, Aug. 31, 1990, Federal Republic of Germany—German Democratic Republic), BGB1. II 889 [hereinafter Unification Treaty].

54. *Id.* Annex II, Subject Area B, art. I. No. 2.

55. *Id.* Annex II, Subject Area B, art. I, No. 5, at 1159 [hereinafter Claims Law] (Exhibit A, attached, is the English translation). It is likely even the comprehensive Claims Law will not be the final legislation on this complex subject. As of this writing, new amendments have already been proposed. See e.g., *Investitionshemmnisse sollen schnell beseitigt werden (Investment Hurdles Should Be Removed Expediently)*, Frankfurter Allgemeine Zeitung, Feb. 7, 1991, at 8; *Wie Hemmnisse bei der Privatisierung beseitigt werden (How Hurdles to Privatization Are Avoided)*, Frankfurter Allgemeine Zeitung, Mar. 20, 1991, at 10.

1. *Relationship Between the Registration Decree and the Claims Law*

The Claims Law grandfathers pending claims filed under the Registration Decree into the new claims program.⁵⁶ Additionally, the Claims Law requires persons with present power to dispose of an asset to investigate the pendency of any claims before making any disposition of the property.⁵⁷ Late-filing claimants under the Registration Decree may also block a state administrator from making any disposition of the assets.⁵⁸ More significantly, the Claims Law provides that even if a claimant has missed all deadlines under the Registration Decree, and no disposition of the assets has been made, the filing of a claim under the Claims Law preserves the entitled party's right to restitution.⁵⁹

The Claims Law also broadens the class of persons who may be claimants; establishes that all successful claimants are entitled to restitution as a basic initial remedy, unless compensation is not practicable or not preferred; and extends the claims program to certain Nazi-era expropriations as well. Furthermore, the Claims Law greatly clarifies the procedural framework whereunder claims may be made, administered, objected to, and paid.

2. *Who May Be a Claimant?*

Because the world has dramatically changed since 1933, it will be difficult, but not impossible, to turn the clock back and determine who the rightful holders of East German assets were over the past fifty-five years. Recognizing the infinite economic, political, familial, and other changes that have occurred in Germany since 1933 with respect to private ownership of assets, the Claims Law has settled on a simple catchall class of persons who may file a claim—the “entitled party.”

The Claims Law defines entitled parties as “individuals and corporations, whose assets are affected” by certain specified state actions, enumerated in section 1 of the Claims Law.⁶⁰ The objectionable state actions include state expropriation of property in exchange for no value or low value;⁶¹ state takings by “manipulations” and wrongful state action outside the rule of law;⁶² and continuation of the present state administration of such affected assets.⁶³ Assets for which no claims may be made include assets expropriated “by operation of foreign occupation statutes or foreign occupation sovereignty,” that is, Eastern German assets expropriated by the Soviet Union (although as of this writing this

56. See Claims Law, *supra* note 55, §§ 28(1), 30.

57. See *id.* § 3, § 4(2).

58. See *id.* §§ 3(3), 15(3)–(4).

59. See *id.* § 11(2) (second sentence).

60. *Id.* § 2(1).

61. See *id.* § 1(1), (2).

62. See *id.* § 1(3), (6), (7); see also *id.* § 4(2) (3).

63. See *id.* § 1(3)–(4).

exclusion has been attacked in court); claims that the GDR settled by international treaty; share rights in the Loan for Redemption for Pre-Currency Reform Credit Balances, and claims of the five new federal states and Berlin.⁶⁴

"Assets" is a broadly defined term that includes real property, financial interests, and interests in businesses. By omission, the Claims Law seems to exclude claims for intangibles such as copyrights or trademarks that may be unconnected with a business interest.⁶⁵ Although not technically defined as an "asset," expropriated chattels and other personal property may also be the subject of claims.⁶⁶ Thus, any person or corporation or their legal successors with an interest in such assets are "entitled parties" who may file a claim. "Tenants and users of residential, recreation and business real property" may also file claims, if they are affected by such assets.⁶⁷

3. Remedies Available to Successful Claimants

As a general rule, the Claims Law establishes that all successful claimants have the right to have their assets returned to them⁶⁸ unless return is impracticable because of complexity or subsequent changes to the asset since it was expropriated⁶⁹ or if it was properly (*in redlicher Weise*) acquired.⁷⁰ Business interests are also subject to restitution to their rightful owners if, after considering the business's "technical progress and general economic development, it is comparable with the expropriated business at the time of expropriation."⁷¹ A general provision dealing with adjustments to value in the case of restitution leaves open the question of whether a claimant would owe the FRG money if an asset had actually appreciated in value since its expropriation.⁷² The FRG's desire to offer restitution as a remedy is so strong, that, even where restitution of the exact same land is not possible, an entitled party may receive substituted equivalent assets (that is, a similar tract of land) instead.⁷³ If restitution is not possible, a claimant may elect monetary compensation⁷⁴ to be paid from the Compensation Fund.⁷⁵

64. *Id.* § 1(8) (a).

65. *See id.* § 2(2).

66. *See id.* § 10.

67. *Id.* § 19.

68. *Id.* § 3.

69. *See id.* § 5.

70. *Id.* § 4(2). "*In redlicher Weise*" combines elements of good faith, due process, and general legitimacy. It is difficult to translate exactly, for even the Germans are not certain of the limits of its ambiguity. "Between them, neither state [the GDR nor the FRG] clarified what '*in redlicher Weise*' means." *Redlicher Erwerb (Proper Acquisition)*, DER SPIEGEL, July 31, 1990, at 26; *see also Der Rahmen ist abgesteckt (The Framework Has Been Set)*, Die Zeit, June 29, 1990, at 1.

71. Claims Law, *supra* note 55, § 6(1).

72. *See id.* § 7.

73. *See id.* §§ 9(2), 21.

74. *Id.* § 8-9.

75. *See id.* § 22.

The third remedy available to all claimants is a cessation of state administration of a reconveyed asset.⁷⁶ The Claims Law obligates present state administrators to maintain the asset,⁷⁷ to investigate the pendency of any claims before making any disposition of the asset,⁷⁸ and to obtain the owner's consent before entering into any long-term contractual obligations or legal transactions with respect to the asset.⁷⁹

The Claims Law also makes state administrators liable for "material losses due to gross violation" of their duties for the "orderly conduct of the business or by violation of other obligations of the state administrator during the administration period."⁸⁰ These damages are to be paid from the Compensation Fund,⁸¹ which may in turn through subrogation, seek reimbursement from the state administrator.⁸² In summary, the Claims Law offers successful claimants, where appropriate, the following four remedies: (1) restitution (or substituted property); (2) compensation; (3) lifting of state administration; and (4) damages for gross business management violations by the state administrator.

4. *Nazi-Era Claims*

For various reasons, the GDR had consistently denied any responsibility for the improper expropriation of assets in its territory by its predecessor, Hitler's Third Reich. The Claims Law, for the first time, permits claims by entitled parties for expropriations and other state takings of assets in Eastern Germany by the Nazi regime from January 30, 1933, to May 8, 1945.⁸³ The class of persons who may make such 1933–1945 claims, however, is narrower than the class who may make GDR (that is, 1949–1990) claims. Only "individuals and associations, who lost their assets during the period January 30, 1933–May 8, 1945 for racial, political, religious, or ideological reasons," can make 1933–1945 claims.⁸⁴

The FRG on October 5, 1990, amended the July 11, 1990, Registration Decree by means of a Third Decree with language nearly identical to the Claims Law.⁸⁵ The amendment to the Registration Decree permits such Nazi-era claims on the same basis as the Claims Law and also recognizes that "heirs or legal successors within the meaning of the Restitution Law [Claims Law] are successor organizations and the Conference on Material Claims Against Germany,

76. *Id.* § 11.

77. *Id.* § 15(1).

78. *Id.* § 15(4).

79. *Id.* § 15(2).

80. *Id.* § 13(1).

81. *Id.* § 13(2); *see also id.* § 22.

82. *Id.* § 13(3).

83. *Id.* § 1(6).

84. *Id.*

85. *Dritte Verordnung über die Anmeldung vermögensrechtlicher Ansprüche vom 5. Okt. 1990* (Third Decree on the Registration of Asset Claims of Oct. 5, 1990) art. 1, § 1 [hereinafter Third Decree].

Inc., provided no successor organizations file claims.’’⁸⁶ The Frankfurt director of the Conference on Jewish Material Claims in Germany is quoted as saying the organization plans to file claims for community property such as synagogues, schools, and cemeteries, and for assets where heirs cannot be located.⁸⁷ Berlin is expected to be especially affected because roughly one third of Germany’s pre-war Jewish community of 500,000 lived there.

B. SUMMARY OF POST-UNIFICATION CLAIMS PROCEDURES

The GDR Registration Decree and the FRG Claims Law are interlocking components of the current German claims program. To a broad spectrum of claimants this program offers generous remedies for assets in the Eastern German territory taken by either the Nazis (1933–1945) or the Communists (1949–1990). Litigation (still pending as of this writing) in the Federal Constitutional Court may also permit claims to be filed for assets expropriated under Soviet occupation from 1945 to 1949.

The following should be noted with respect to relevant deadlines:

(1) The deadline for filing claims seeking restitution of property expropriated by the GDR (that is, from 1949 to 1990) was October 13, 1990,⁸⁸

(2) The deadline for filing claims seeking restitution of property expropriated by the Third Reich (that is, from 1933 to 1945) was March 31, 1991,⁸⁹

(3) However, if after the dates specified in (1) and (2) above, the present state administrator has not disposed of the affected assets or has not contracted to dispose of them, late claimants may still be awarded restitution.

(4) As of this writing, the deadline for filing claims for compensation has not been set.

(5) Claims may be filed with:

The Federal Minister of Justice
Heinemannstrasse 6
D-5300 Bonn 2
Federal Republic of Germany⁹⁰

III. Legal Consequences for U.S. Claimants

At the time the GDR adopted the Registration Decree and the FRG passed the Claims Law, there were 1,899 unsettled U.S. claims validated by the Foreign Claims Settlement Commission of the United States and espoused by the United

86. *Id.* art. 1, § 2.

87. N.Y. Times, *supra* note 2.

88. Property Claims, *supra* note 52.

89. Third Decree, *supra* note 85.

90. See U.S. FOREIGN CLAIMS SETTLEMENT COMM’N, SUPPLEMENTAL NOTICE CONCERNING PROPERTY CLAIMS AGAINST THE FORMER GERMAN DEMOCRATIC REPUBLIC, Dec. 1990, at 2.

States Government through the United States Department of State.⁹¹ A question arises as to the interplay between the newly established German program and these earlier claims. After the Registration Decree was announced on July 11, 1990, the United States Department of State announced:

The U.S. Government will continue to pursue a lump-sum settlement with a unified Germany. Claimants whose claims have been espoused by the U.S. Government may not now remove their claims from the level of government-to-government negotiation, whether or not they register under the GDR's July 11 law, and the U.S. Government continues to reserve the right to settle all claims covered by the [Commission's] German claims program.

The U.S. Government recognizes, however, that some claimants whose claims have been espoused may wish to register under the July 11 law. In particular, claimants who wish to recover their property should note that the July 11 law may provide an opportunity for such recovery, and that a lump-sum settlement would not result in the return of the property. Registering claims now, as a precautionary step, will protect possible rights to return of property.

Therefore, those individuals and organizations whose claims have been espoused by the U.S. Government may register under the July 11 law. Such claimants should note, however, that it is not yet clear whether claims espoused by the U.S. Government will result in recovery under the July 11 law. Although the U.S. Government and Germany have not yet decided how to resolve claims espoused by the July 11 law, it is to be expected that no claim will be allowed to result in a double recovery.⁹²

There are some legal and practical reasons as to why the 1,899 U.S. claimants "may not now remove their claims" from the Foreign Claims Settlement Commission program. Once these claims have been "certified" by the Commission, there is no statutory authority that would permit the Commission, or the United States Departments of State or Treasury, to dismiss or otherwise "decertify" them. Such decertification could only have occurred before title VI expired in 1981.⁹³ Also, it is at least arguable that once a claim has been certified by the Commission and espoused by the United States Government, it no longer technically or legally belongs to the claimant, but instead belongs to the sovereign, that is, the United States Government, and cannot be "de-espoused."

Second, the FRG may elect en bloc not to recognize the Commission's determinations, since these might represent obligations of the GDR that the FRG did not technically assume as part of the Unification Treaty. Article 12(2) of the treaty states that "[T]he United Germany will determine its position with regard to the transfer of international contracts⁹⁴ of the German Democratic Republic after consultations with the appropriate contract parties and with the European Communities, insofar as their jurisdiction is affected."⁹⁵ The FRG, therefore,

91. See *supra* note 43 and accompanying text.

92. U.S. DEPARTMENT OF STATE AND FOREIGN CLAIMS SETTLEMENT COMM'N, NOTICE CONCERNING CLAIMS AGAINST PROPERTY IN THE GERMAN DEMOCRATIC REPUBLIC, Aug. 1990, at 3.

93. See *supra* note 12.

94. The German translation is "völkerrechtlicher Verträge."

95. Unification Treaty, *supra* note 53, art. 12(2).

conceivably could decline to assume the GDR's obligations to settle the 1,899 Commission claims, preferring instead that these claims be resubmitted under its own new program. This possibility must be considered remote given the fact that: (1) U.S.-GDR claims negotiations were already well under way when unification occurred; (2) payment under the Commission's program would be less expensive and less complicated; and (3) the policy inherent in the Claims Law of encouraging the FRG's recognition of claims, not their denial.

IV. Conclusion

The territory of the GDR is about the size of Ohio. For the better part of the past fifty-five years, two dictatorships (actually three, counting Soviet occupation from 1945–1949), the Nazis and the Communists, systematically expropriated private property. Unified Germany now has a claims program that offers a wide class of injured persons (that is, entitled parties) appropriate remedies: restitution (or substituted property), compensation, lifting of state administration, and damages.

Potential U.S. claimants comprise two groups. The first, which consists of those whose 1,899 claims have been certified by the Foreign Claims Commission of the United States and espoused by the United States Government, are still technically bound to that program. As a precaution, however, these claimants may file a supplementary claim directly with Germany seeking restitution (which is not provided by the U.S. efforts) or other remedies. A second group, composed of potential first-time American claimants, has the same standing and procedural safeguards as German citizens or citizens of other countries to file claims directly with the German authorities. A final deadline for submission of claims has not been determined.

EXHIBIT A

LAW GOVERNING UNSETTLED PROPERTY ISSUES¹

Unification Treaty/Annex II Capital III Subject Area B Article I No. 5 (Law Gazette (*Bundesgesetzblatt*) 1990 II p. 1159) Article I. General Provisions

§ 1 Scope. (1) This law applies to property right claims for assets, which were

- a) expropriated without compensation therefor and incorporated into national property (hereinafter "nationalized" or "nationalization");
- b) expropriated for compensation lower than compensation citizens of the German Democratic Republic were entitled to;
- c) conveyed to third parties by government administrators or, in case of nationalization, by individuals authorized to dispose of the property;
- d) nationalized based on the decision of the head of the ministerial council dated February 9, 1972 and related provisions.

(2) This law furthermore applies to improved land and buildings, which were nationalized by expropriation, relinquishment of assets, donation, or renunciation of inheritance, if rents and leases did not cover the cost and the resulting indebtedness.

(3) This law further applies to claims for return of assets and rights of use, which were acquired by manipulations, e.g., misuse of power, corruption, coercion, or deceit on the part of the acquiring party, the government authorities, or any third party.

(4) Moreover, this law repeals

- government trust administration of assets of citizens who departed the territory of the former German Democratic Republic without official permission to depart.
- preliminary administration of assets belonging to citizens of the Federal Republic of Germany and Berlin (West) as well as corporations located in the Federal Republic of Germany or Berlin (West), which had been turned over by law to the former German Democratic Republic's government agencies;
- administration of foreign assets, which had been turned over to the government of the former German Democratic Republic (hereinafter referred

1. Translated by Barbara E. Lawson and William Karl Wilburn, Esq. This translation has retained the spacing, organization, and punctuation of the German original. "Abschnitt" is translated as "Article"; "§" as "Section"; and "Absatz" as "Subsection."

to as government administration), and the claims of owners and entitled parties² related thereto.

(5) This law includes the settlement of claims and other rights with respect to assets pursuant to Subsections 1–4.

(6) This law shall be applied analogously to asset claims of individuals and associations, who lost their assets during the period January 30, 1933–May 8, 1945 for racial, political, religious, or ideological³ reasons by forced sales, expropriation, or in some other manner.

(7) This law applies equally to the return of assets relating to the repeal of unconstitutional penal, disciplinary or administrative decisions regulated elsewhere.

(8) This law does not apply to

- a) expropriation of assets by operation of foreign occupation statutes or foreign occupation sovereignty;
- b) claims for assets which were settled by the German Democratic Republic based on intergovernmental⁴ agreements;
- c) share rights in the Loan for Redemption of Pre-Currency Reform Credit Balances;
- d) claims of political subdivisions of the newly joining territory in accordance with Article 3 of the Unification Agreement

so far as they are included in the Municipal Property Law of July 6, 1990. (GDR Law Gazette [GB1.I] Nr. 42, at 660).

§ 2 Definitions. (1) Entitled parties within the meaning of this law are individuals and corporations, whose assets are affected by § 1, as well as their legal successors.

(2) Assets within the meaning of this law are improved or unimproved parcels of land as well as autonomous buildings and structures (hereinafter land and buildings), rights of use, rights to tangibles in land or buildings, and movable assets. In the meaning of this law, assets may also be credit balances in bank accounts and other title to monetary payments as well as proprietary/participatory interest in businesses or in operations/business branches located outside of the German Democratic Republic.

Article II. Reconveyance of Assets

§ 3 In General. (1) Assets which were subjected to any measures specified in § 1 and that were nationalized or sold to third parties shall be reconveyed to the entitled party upon his request, unless barred by law. The responsible agency shall make the decision as to the reconveyance.

2. [*Berechtigte*, or *Berechtigter*]

3. [*weltanschaulichen*]

4. [*zwischenstaatlich*]

(2) Should several individuals submit claims for the same asset, then the entitled party first affected by any measure outlined in T1 shall be deemed the entitled party.

(3) If a claim was filed pursuant to the Decree on the Filing of Property Claims dated July 11, 1990, (GDR Law Gazette [GB1.I] Nr. 44, at 718), as amended by the most recent change, the second Decree on the Filing of Property Claims dated August 21, 1990—hereinafter referred to as Filing Decree—any person with power to dispose of the assets shall refrain from entering any legal transactions or long-term contractual obligation without the entitled party's approval. Excluded are such legal transactions which would fulfill the lawful duties of the owner, or are absolutely necessary to maintain or operate the assets. This applies also to cases of late filings.

(4) If the filing deadline (T3 of the Filing Decree) was missed and no late filing occurs, any person with power to dispose of the assets may dispose of the assets or engage in financial or legal transactions related thereto. If disposition of the assets has not yet been made, then the entitled party may still file his claim for restitution. Otherwise, he is only entitled to claim the proceeds as compensation.

(5) Before undertaking disposition of the assets any person with power to dispose of them shall insure that no claim has been filed pursuant to Subsection 3.

§ 4 Exceptions to Restitution. (1) Restitution of ownership or other rights in the assets is excluded if the nature of the asset makes restitution impossible.

(2) Restitution is further excluded if individuals, religious organizations, or non-profit foundations have properly⁵ acquired ownership or legal rights of use in the assets. This does not apply in cases of land and buildings, if the transaction for acquisition was entered into after October 18, 1989, and should not have been authorized pursuant to § 6, Subsections 1 and 2 of the Filing Decree.

(3) In general, an acquisition of an asset shall be considered improper⁶ if it

- a) did not agree with the general laws, procedures, and other administrative practices of the German Democratic Republic in force at the time of the acquisition, and the acquirer knew or should have known thereof, or
- b) was based on the fact that the acquirer had manipulated the time of acquisition or the conditions of acquisition or the choice of the object of acquisition by means of corruption or misuse of political power, or
- c) was induced by an acquirer who utilized an emergency situation or deception against the former owner, instigated by the acquirer or a third party.

§ 5 Exceptions to Restitution of Ownership Rights in Land and Buildings. A reconveyance of ownership rights in land and buildings is, pursuant to § 4 Subsection 1 specifically excluded in cases where land and buildings

- a) were altered by considerable construction efforts with regard to their type of use or purpose, and if there is public interest for such use;

5. [*in redlicher Weise*]

6. [*unredlich*]

- b) were dedicated to common usage;
- c) were utilized in complex construction of apartment houses or housing developments; or
- d) were incorporated into commercial use or into a production unit and cannot be returned without considerable impairment of the business.

§ 6 Restitution of Businesses. (1) A business shall be returned to the entitled party, if, after considering its technical progress and general economic development, it is comparable with the expropriated business at the time of expropriation. Considerable deterioration or considerable improvement of the financial or profit status shall be adjusted. The business shall be comparable to the expropriated business if the goods or services offered by the business, after considering its technical and economic progress, remained generally unchanged, or if former goods or services have been replaced by others. If the business has been combined with several others, then such comparison may be made only with this portion of the business.

(2) A considerable deterioration of the financial status of the business is presumed, if after establishing an opening balance as of July 1, 1990, after the effective date of the DM-Balance Law, there would be heavy indebtedness and insufficient capitalization in light of the legal capital requirements for the particular type of business. In this case, the business is entitled to claims under §§ 24, 26 Subsection 3, and § 28 of the DM-Balance Law; these claims may not be rejected. In the case of § 28 of the DM-Balance Law, the capital depreciation account shall be amortized by the obligee. A claim pursuant to sentence 2 hereof is void, if it can be evidenced that the personal capital situation was not more favorable at the time of expropriation.

(3) A considerable improvement of the financial status of the business is presumed, if after establishing a DM opening balance according to the DM-Balance Law, there is an adjusted liability pursuant to § 26 of the DM-Balance Law and it can be evidenced that at the time of expropriation the business had a lower capital contribution as compared to the present balance amount. There is no need to evidence a lower personal capital contribution, if the adjusted liability corresponds to the value of land and buildings which at no time were ever part of the business.

(4) A considerable change of the profit situation of the business is presumed if the profits to be expected for the financial year after July 1, 1990, in units of the expected marketable goods or services, after considering the general economic development, are considerably higher or lower than at the time of expropriation. If new products have to be developed, in order to achieve a comparable turnover, then an entitlement arises to the extent of the necessary development costs unless the business is not restorable. If the turnover is considerably higher than at the time of expropriation, especially in light of development of new products, then an adjustment liability arises equal to the amount of the required development costs, as long as they were not yet written off, unless this would

result in a considerable decline of the financial status of the business pursuant to Subsection 2.

(5) The return of expropriated business to entitled parties is achieved by the conveyance of rights to which the owner is entitled, according to the specific character of the business. If the business is of a different character than the expropriated business, it shall be reconverted, upon the owner's request, into the former or other status prior to reconveyance. If the business to be returned was combined with one or several others for the formation of a new business unit, and the business is not partitioned therefrom, shares shall be conveyed to the entitled party at a value, which, after application of Subsections 1–4, the ratio of the book value of the returnable business would correspond to the book value of the combined business. Partition shall not be undertaken, if it is not financially tenable. If shares remain with the trustee,⁷ especially for the purpose of adjusting considerable capital appreciation, they may be acquired by the share owners who were granted the rights in these shares by virtue of this law.

(6) The request for restitution of a business may be filed by any entitled party. One entitled party's claim shall be considered to be in favor of all such parties entitled to this same claim. Compensation may be selected in lieu of restitution, if none of the entitled parties has filed for restitution.

(7) If, pursuant to Subsection 1 Sentence 1, a restitution is not possible, or if the entitled party files for compensation, the value of the business at the time of nationalization or incorporation into government administration shall be paid over in deutsche marks (hereinafter DM). A formerly received purchase price or discharge payment shall be converted at the rate of 2.00 marks, German Democratic Republic currency to 1.00 deutsche marks, currency of the Federal Republic of Germany and shall be set off from the compensation amount.

(8) If in cases of § 1 Subsection 1 letter d, restitution has already been made at the time of enactment of this law, an entitled party may request the return to be reevaluated pursuant to the provisions of this law and request that it be adapted to its requirements.

(9) By legal decree and with the consent of the Minister of Economics, the Minister of Finances is authorized to regulate the procedure and jurisdiction of the authorities or agencies responsible for the execution of restitution and compensation of business participatory interests, and to issue regulations regarding the calculation of changes in the capital and profit status of the business and its valuation.

§ 7 Adjustment of Value. In cases of restitution of assets—except as noted in § 6—the appreciation in value financed by the state budget and any depreciation in value shall be determined and adjusted. In order to determine changes in value, reference is made to specific legal provisions on such valuations.

7. [Treuhandanstalt]

§ 8 Choice of Remedy. (1) If entitled parties are found to be entitled to restitution pursuant to § 3, they may opt for compensation in lieu of restitution. Entitled parties, whose land was nationalized due to relinquishment of assets, donation, or renunciation of inheritance are exempted from this provision. (2) If more than one individual is entitled to an asset, then the choice of remedy may only be exercised jointly.

§ 9 Principles of Compensation. (1) In cases of § 4, Subsections 1 and 2, monetary compensation is granted. No compensation is granted for land pursuant to § 1, Subsection 2, which was nationalized by relinquishment of assets, donation, or renunciation of inheritance.

(2) If land cannot be reconveyed for reasons of § 4 Subsection 2, compensation may be effected by means of conveyance of properties of comparable value. If this proves impossible, monetary compensation shall be considered. § 21 Subsection 3, Sentence 1 and § 4 apply correspondingly to the appropriation of substitute land.

(3) Further relevant standards may be adopted through legislation.

§ 10 Chattels. (1) If chattels were sold and cannot be returned pursuant to § 3 Subsections 3 and 4 and § 4 Subsections 2 and 3, entitled parties may request an amount equal to the chattel proceeds from the Compensation Fund, unless the proceeds were already credited to an account or paid out.

(2) If no proceeds were realized upon disposition of the chattel, an entitled party is not entitled to compensation.

Article III. Lifting of State Administration

§ 11 In General. (1) State administration of assets will be lifted, following an entitled party's claim that has been approved by the agency's decision. In lieu thereof, an entitled party may opt for compensation pursuant to § 9 by renouncing his right to restitution.

(2) If an entitled party has not filed a claim by the end of the filing period (§ 3 of the Filing Decree) the state administrator is authorized to make any disposition of the administered asset. The state administrator may not make any disposition of assets, if an entitled party files a claim for the administered assets after the filing period deadline.

(3) Before making any disposition of any assets, the state administrator shall determine if any claim was filed pursuant to the Filing Decree.

(4) An entitled party is entitled to proceeds if a disposition of the property has been made. If no claim was filed by an entitled party, the proceeds of the sale of any assets shall be paid over to the authority in charge of the Compensation Fund for administration.

(5) If state administered financial assets⁸ were abated by operation of discriminating or confiscatory laws, adjustment shall be made therefor. Further relevant standards may be adopted through legislation.

§ 12 State Administered Businesses and Business Interests. The terms of restitution of state administered businesses and business interests are governed by § 6. The time of commencement of state administration, rather than time of state expropriation, applies.

§ 13 Liability of State Administrators. (1) If an entitled party entitled to a state administered asset suffers material losses due to gross violation of the duties of the state administrator arising from the orderly conduct of the business, or by violation of other obligations of the state administrator during the administration period, the entitled party shall receive compensation for such damage.

(2) Compensation for such damages shall be made from the Compensation Fund in accordance with legal provisions on government liability.

(3) The Compensation Fund is entitled to a corresponding recovery from either the state administrator or the municipal administrative agency in charge of the state administrator.

§ 14 (1) An entitled party may not claim damages if assets were not taken into state administration, if the state authority in charge had no knowledge of the existence of either factual requirements for state administration, or had no knowledge of the existence of such assets and upon consideration of factual circumstances was not able to obtain the asset.

§ 15 Powers of the State Administrator. (1) Until state administration is lifted, the state administrator is responsible for securing and properly administering an asset.

(2) The state administrator may not enter long-term contractual obligations or legal transactions without the owner's consent, until state administration is lifted. Exempted are legal transactions absolutely essential for the fulfillment of the owner's lawful duties or for maintenance and operation of the asset.

(3) The restriction pursuant to Subsection 2 is inapplicable after expiration of the filing period (T3 of the Filing Decree) as long as the owner has not filed a claim for the state administered asset.

(4) Before making a disposition of any asset, the state administrator shall first determine whether any claims were submitted pursuant to Subsection 3.

Article IV. Legal Relations Between Entitled Parties and Third Parties

§ 16 Assumptions of Rights and Duties. (1) Upon restitution of ownership or lifting of state administration, the rights and duties resulting from the ownership

8. [Geldvermögen]

shall be assumed, either by the entitled party himself or an administrator determined by the entitled party.

(2) Upon restitution of asset rights or lifting of state administration, an entitled party assumes all legal relations with regard to the particular asset.

(3) Existing legal contracts can only be modified or terminated in accordance with laws presently in force.

§ 17 Tenancy and Use Rights. After restitution of land and buildings or the lifting of state administration, prevailing tenancy and use rights remain unaffected. This does not apply to cases of § 1 Subsection 3, if the tenant or user has acted improperly⁹ as defined by § 4 Subsections 2 and 3 hereof.

§ 18 Encumbrances on Real Property. (1) Tangible encumbrances in force at the time of nationalization shall, upon restitution be rerecorded into the land records. If the beneficiary was already paid out by the government, the basic claim will pass to the Compensation Fund. In this case, and upon demand by the requesting authority, a conventional mortgage shall be recorded into the land records, for the benefit of the Compensation Fund, unless the demand was already satisfied by the entitled party.

(2) Personal demands arising from mortgages established in favor of state-owned financial or credit institutions, and continuing to exist beyond nationalization will cease to exist if restitution to the entitled party is not effected. The legal successor of the financial or credit institution shall be granted an adjustment payment from the compensation fund.

(3) Construction mortgages shall be assumed by the entitled party if, in accordance with the mortgage, construction to increase or maintain the value of the land was undertaken.

(4) Further relevant standards may be adopted through legislation.

§ 19 Other Third Party Claims to Real Property. (1) Tenants and users of residential, recreation and business real property may file claims for expenses which they were required to make pursuant to the laws of the German Democratic Republic, or for reimbursement of costs, replacement of value, or appropriate compensation, regardless of the due date of such liabilities.

(2) Filing shall be made as outlined in the provisions contained in Article IV.

(3) If an entitled party agrees to such third party claims, an agreement thereof shall be made. In case of dispute, the matter may be settled in court.

(4) Lifting of state administration or restitution shall not be affected by this section.

§ 20 Preemptive Purchase Rights. (1) Tenants or users of single and dual family homes and recreation properties under state administration, or against which a claim for restitution was filed, shall, upon request, be granted a preemptive purchase right.

9. [nicht redlich]

(2) In cases where third parties have acquired property rights or easements, such parties will be granted a preemptive purchase right.

(3) The filing of requests for preemptive rights shall be submitted in accordance with Article VI.

§ 21 Substituted Real Property. (1) Tenants and users of single family homes and recreation property under state administration or against which a legitimate claim for restitution has been granted, may request that the entitled party be issued substituted property in lieu of the property in question, if the tenants or users are prepared to purchase the property. Entitled parties are not required to accept substituted property.

(2) Claims pursuant to § 9 Subsection 2 shall have first priority.

(3) Claims according to Subsection 1 Sentence 1 shall be approved, if the entitled party agrees to accept available municipal property within the township or municipal boundaries, and there would be no conflicting legitimate interests in the conveyance. This applies especially if tenant and user have contributed great efforts to the appreciation and preservation of the property value.

(4) Differences between the value of the substituted property and the original property at time of nationalization or time of deprivation of the property shall be adjusted.

(5) If an entitled party to a state administered real property was conveyed a substitute property, the person with power to dispose of the property is authorized to sell the property to the tenants or users.

Article V. Organization

§ 22 Administration of Unsettled Property Issues. (1) The provisions contained in this law with respect to the Compensation Fund to be created shall be administered by the states¹⁰ of Mecklenburg-Vorpommern, Brandenburg, Saxony, Saxony-Anhalt, Thuringia and Berlin.

(2) The creation of the Compensation Fund is regulated by law.

§ 23 State Agencies. The states shall establish local and state offices for the resolution of unsettled property issues.

§ 24 Lesser State Agencies. A county¹¹ office shall be established for each county, for each independent town or city, and for Berlin for the purpose of administering of unsettled property issues. If need be, these lesser state agencies may each represent several counties.

§ 25 Higher State Agencies. A higher state agency for the purpose of administering unsettled property claims shall be established for each state.

10. [Bundesländer]

11. [Landkreis]

§ 26 Objection Review Boards. (1) For the purpose of processing of unsettled property claims each state shall establish an Objection Review Board, and, if need be, several review boards may be established. The board shall consist of one presiding officer and two assistant officers.

(2) The Objection Review Board will render decisions about any pending objections independent of any directive and by a voting majority.

§ 27 Administrative and Judicial Assistance. All authorities and courts are required to render gratuitous assistance to the offices and agencies mentioned in this Section.

§ 28 Transitional Procedures. (1) Until lesser state agencies are established, the tasks laid out by this law shall be assumed by the county administrations¹² or municipal administrations of independent towns and cities.¹³ Once established, the state agencies for property issues shall accept claims filed pursuant to the Filing Decree from the county or municipal administrations for further processing.

(2) Until the state administrations are established, the authorized government representatives for these districts shall assume the tasks pursuant to § 23.

(3) In order to assure uniform application of this law, the ministerial council shall preliminarily assign this task a central authority.

§ 29 Council. The central authority under § 28, Subsection 3 shall also have a Council consisting of one representative from each of the federal states named in § 22 Subsection 1, as well as four representatives from interest groups, as well as four experts.

Article VI. Rules of Procedure

§ 30 Filing of Claims. Claims under this law shall be filed with the competent agency by submission of a petition form. Filing pursuant to the Filing Decree is considered a petition for restitution or for lifting of state administration.

§ 31 Duties of State Agencies. (1) The Agency shall verify the facts in a claim and the claimant¹⁴ shall assist therewith.

(2) The agency shall advise the affected entitled parties¹⁵ or state administrator, or third party whose legal interests may be affected by the procedure and shall consult with them for the duration of the procedure.

(3) Upon request, a claimant is entitled to receive from the Agency all relative information necessary for the enforcement of his claim. In this case, prima facie evidence¹⁶ shall be sufficient. The information shall be supplied in writing.

12. [Landratsämter]

13. [Stadtverwaltungen der kreisfreien Städte]

14. [Antragsteller]

15. [die betroffenen Rechsträger]

16. [Glaubhaftmachung des Anspruchs]

(4) The Agency may request and obtain comprehensive information from the affected entitled parties, present owner, state administrator, or other individual charged with the administration of the asset.

Determination of Claims, Choice of Remedy

§ 32 (1) The Agency shall notify the claimant of its expected decision in writing and allow him one month's time for his comments. He shall be advised of the possibility of obtaining information pursuant to § 31 Subsection 3 as well as the right to choose a remedy contained in Subsection 2.

(2) As long as a decision is pending, a claimant, in lieu of restitution of the asset or lifting of state administration, may elect for compensation pursuant to § 9. This does not apply to cases under § 8 Subsection 1 Sentence 2.

(3) If the claimant demands information, the agency may make a decision in the matter at the earliest within one month after the claimant has received the information.

(4) Decisions and information pursuant to this § which entail a waiting period or responsive deadline shall be served to all parties whose rights are affected.

§ 33 (1) If the claimant has opted for compensation, the decision shall be limited to a determination of the amount of compensation as well as the determination whether the option for compensation may be exercised; the remainder of the procedure is to be regulated by special procedures.

(2) A special decision is required for cases of entitlement of value adjustment pursuant to § 7, and for compensatory entitlements pursuant to § 13 Subsections 2 and 3, and § 14.

(3) The parties involved shall be issued and shall be served a written notice of the decision. Such notice shall describe the reasons for the decision and instructions on filing objections.

(4) Together with the decision, the parties shall be served a transfer record. This record shall reflect data with respect to the determined ownership and asset status, any agreements made, any rights claimed pursuant to § 19 and any other essential determinations with respect to the assets to be conveyed.

(5) The decision shall become final within one month, unless an objection is filed.

§ 34 Transfer of Ownership, Correction of Land Records, and Expunging of Land Record Entries Relating to State Administration. (1) After a decision awarding restitution or other tangible rights becomes uncontestable, all rights shall pass to the entitled party.

(2) Upon restitution of ownership and other tangible rights in land and buildings, the Agency shall request the land records office to effect correction of the land record entries. No fees shall be assessed for such correction of land records.

(3) A claimant is exempted from payment of any real estate transfer tax for this transaction.

(4) Upon lifting of state administration, the agency shall request the land records office to expunge any entry showing state administration.

§ 35 Local Jurisdiction. (1) The agency administering the unsettled property issues in whose district a claimant or his heir last resided shall have jurisdiction to decide claims with respect to assets under state administration. This applies also to assets which were confiscated and nationalized.

(2) In all remaining cases the responsible Agency shall be the one in whose jurisdiction the asset is located.

(3) If a claim has been forwarded to an agency without jurisdiction or any other office without jurisdiction or competence, then these agencies or offices are required to forward the claim to the proper agency without delay for further administration and shall notify the claimant thereof.

§ 36 Disputes Procedure. (1) Objections to claims may be raised with respect to any decision rendered by the agency. Such objections shall be filed with the agency in writing within one month after the objecting party was served with the decision. The objection shall set forth its reasons. If the objection does not achieve full or partial adjustment to the claim, the objection may be directed to the proper Objection Review Board.

(2) If by reversal or change of the decision a party other than the objector shall be the charging party, then he shall be heard before administrative remedies are effected or a ruling on the objections is rendered.

(3) The ruling on the objections shall set forth reasons, appeal information and shall be served.

§ 37 Admissibility of Legal Actions. A party adversely affected by a decision with respect to an objection, may seek judicial review in a proper court of law.

§ 38 Costs. (1) The administrative procedure, including objections, shall be free of costs.

(2) The claimant shall bear the costs of any fees for representation he may have engaged. Counsel fees for an objection procedure shall be reimbursed to the party filing the objections, if a representative [*“Bevollmaechtigter”*] was required for the proper pursuit of the action, and the objections were justified. The final ruling will also address and settle on any costs to be borne.

§ 39 Repeal of Provisions. Following provisions are repealed:

1. First Executive Directive for the Regulation Governing the Securing of Assets dated September 8, 1952 (VOB1. for Greater Berlin Part I at 459)
2. Regulation Governing Individuals Returning to the Territory of the German Democratic Republic and the Democratic Sector of Greater Berlin dated June 11, 1953 (GDR Law Gazette [GB1.I] Nr. 78, at 805)
3. First Execution Provision for the Regulation Governing Individuals Returning to the Territory of the German Democratic Republic and the

- Democratic Sector of Greater Berlin dated June 11, 1953 (GDR Law Gazette [GB1.I] Nr. 78, at 806)
4. Second Execution Provision for the Regulation Governing Individuals Returning to the Territory of the German Democratic Republic and the Democratic Sector of Greater Berlin dated Aug. 31, 1953 (GDR Law Gazette [GB1.I] Nr. 95, at 955)
 5. Regulation Governing the Administration and Protection of Foreign Assets Located in the German Democratic Republic dated September 6, 1951 (GDR Law Gazette [GB1.I] Nr. 111, at 839)
 6. Regulation Governing the Administration and Protection of Foreign Assets Located in Greater Berlin dated December 18, 1951 (VO1. for Greater Berlin Part I Nr. 80, at 565)
 7. Directive No. 2 Governing the Treatment of Assets of Individuals Who Have Left the German Democratic Republic After June 10, 1953, dated October 3, 1958 (VOB1. for Greater Berlin Part I at 673)
 8. Regulation Governing the Rights and Obligations of the Administrator of Assets of Owners who have Illegally Left the German Democratic Republic Towards Creditors in the German Democratic Republic dated December 11, 1968 (GDR Law Gazette [GB1.II] 1969 at 1)
 9. Directive Governing the Settlement of Property Issues dated November 11, 1989 (GDR Law Gazette [GB1.I] Nr. 22, at 247)
 10. §§ 17 through 21 of the Law Governing the Establishment and Operation of Businesses and Participation in Businesses dated March 7, 1990 (GDR Law Gazette [GB1.I] Nr. 17, 141) as amended by the most recent change in the Law on Amendment or Repeal of Laws of the German Democratic Republic dated 28 June 1990 (GDR Law Gazette [GB1.I] Nr. 38, at 483)
 11. And any regulations enacted in conjunction with these statutory provisions.