



Translation from German

## **Statutes**

of RAG-Stiftung (*Foundation*) comprising the resolution of 1 September 2008

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### **Preamble**

On 7 February 2007 the Federal Government, the State Governments of North-Rhine Westphalia and Saarland, the Trade Union for Mining, Chemistry and Energy and RAG AG agreed to discontinue subsidised support of hard coal mining in Germany by the end of 2018 in a socially acceptable manner. For this purpose the key points of the understanding were put down in a joint agreement (Annex). The German parliament (*Deutscher*



*Bundestag*) will review the resolution on the exit in the light of aspects of economy, securing energy supply and other goals of energy policy. After 2014 North-Rhine Westphalia (NRW) will no longer contribute to the sales subsidies for the ongoing production.

In fulfilment of that agreement the RAG Group (*RAG-Konzern*) founds this civil-law foundation (the "Foundation") in order to cope until 2018 with the adaptation process for hard coal mining in Germany with entrepreneurial responsibility and to secure further development of the controlled corporate group (*Beteiligungskonzern*). The purpose of the Foundation is to bring about, as the owner of the Group, discontinuation of subsidised hard coal mining of RAG AG in implementation of the resolved key points. For this purpose the public sector parties involved have promised to finance the winding-up of RAG AG's active mining, including contaminated sites, and to warrant financing of the perpetual obligations (*Ewigkeitslasten*) of the company. In this way the Foundation and RAG AG take on their obligations for the mining areas at Ruhr and Saar.

Another task of the Foundation is to carve out the controlled corporate group of RAG AG from the joint liability scheme of RAG AG and to offer it on the capital market on its own responsibility. For this purpose the Foundation will choose the way of an initial public offering of the integrated controlled corporate group. As long as it is the owner, the Foundation will exercise its influence on the controlled corporate group with the aim of developing the business in an optimal way while safeguarding the interests of the staff and the jobs.

By means of the proceeds from capitalisation of the controlled corporate group the Foundation will take on financing of the mining obligations of RAG AG resulting from the perpetual obligations on a lasting basis.



## **Article 1**

### **Name, legal form and registered office**

- (1) The Foundation's name shall be "RAG-Stiftung".
- (2) The Foundation is a civil-law foundation with legal capacity.
- (3) The Foundation's registered office shall be in Essen.

## **Article 2**

### **Objective**

The objective of the Foundation shall be:

- a) adaptation, control and support of the German hard coal mining of RAG Aktiengesellschaft (in these Statutes referred to as "RAG") subject to the statutory and other framework conditions for discontinuation of subsidised hard coal mining in Germany. This includes support in removal and avoidance of subsequent burdens of hard coal mining of RAG on nature and the environment within the statutory obligations and support of education, science and culture in the Ruhr and Saar mining regions, to the extent that this is related to German hard coal mining;
- b) acquisition of direct or indirect interests in entities of RAG in accordance with Article 3 and holding and managing such investments. Regarding business entities from the investment and financial division of RAG that are not related to hard coal mining, which are grouped in RAG Beteiligungs-AG (now operating under the name of "Evonik Industries AG") (referred to as "White Business" in these Statutes), management shall also include realisation within the framework of permitted use of funds as defined in Article 3 paragraph (3). The Foundation shall only be allowed to realise the White



Business as defined in Article 3 paragraph (3), including the sale of the shares in Evonik Industries AG by RAG Aktiengesellschaft to the Foundation, if and when sufficient financial security for the Foundation and its investments that belong to the hard coal mining business is warranted upon dissolution of the joint liability scheme between the hard coal mining business and the White Business. The Foundation may take from the time of its establishment preparatory measures, including conclusion of agreements with the public sector and conclusion of inter-company agreements (*Unternehmensverträge*);

- c) use, management and augmentation of its assets as defined in Article 3 for pursuing the objectives described above.

### **Article 3**

#### **Assets**

- (1) At the time of its establishment the assets of the Foundation consist of EUR 2,000,000 (in words: two million euros) in cash.
- (2) The Foundation will use its assets for direct or indirect acquisition of shares in RAG.
- (3) After the acquisition of RAG as laid down in paragraph (2) and subject to fulfilment of the conditions defined in Article 2(b) the Foundation is supposed to realise the White Business for the purpose of achieving the objective of the Foundation. The Foundation is allowed to take all measures that are necessary and useful for such realisation. This shall include but not be limited to resolutions passed at shareholders' meetings of RAG on transformation of the same into a limited liability company (*GmbH*) and conclusion of inter-company agreements with RAG.
  - a) The initial public offering (IPO) of Evonik Industries AG is covered by the founder's will for realisation of the White Business, and that by way of a sale of the shares in



Evonik Industries AG by RAG to the Foundation and Evonik Industries AG's IPO by way of a partial sale of the shares of the Foundation in Evonik Industries AG in connection with the IPO or thereafter. The founder's will also covers the placing of shares in Evonik Industries AG with a third-party investor prior to the IPO.

- b) Holding and managing an interest in the legal entity that is initially offered publicly or realised otherwise is also covered by the founder's will. The Foundation is entitled to use funds of the Foundation to maintain an interest.
- (4) To the extent that the Foundation gains proceeds from the realisation of the White Business that exceed the purchase price which the Foundation has to pay to RAG for the acquisition of Evonik Industries AG, the Foundation shall achieve its objective exclusively by using such surplus to fulfil its duties under the treaty on inherited liabilities (*Erblastenvertrag*) to finance the perpetual obligations.
- (5) Income of the Foundation (dividends and income from investments) shall be used for achieving the objective of the Foundation. Where the Foundation uses such income to pay the purchase price for the acquisition of Evonik Industries AG, this shall also serve the purpose of achieving the objective of the Foundation. The Foundation is allowed to invest income with the aim to maintain and augment the same.
- (6) The assets of the Foundation shall be invested in such a way that a reasonably high level of security and profitability (*möglichst große Sicherheit und Rentabilität*) will be achieved while maintaining sufficient liquidity and safeguarding an appropriate mix and diversification. The financial assets include, in particular, investment of assets in financial assets, lending primarily to banks, and direct and indirect investments in companies.
- (7) The Foundation's cost of administration shall be paid out of the income and, where necessary, out of its liquid funds in advance.
- (8) Endowments from third parties shall accrue to the Foundation's assets, provided that



they are designated for that purpose (Zustiftungen).

- (9) Reserves may be set up in compliance with the regulations applicable to foundations that do not enjoy a tax benefit. They are part of the Foundation's assets.
- (10) Notwithstanding paragraphs (5) and (9) the Foundation shall, until the end of the capped financing (*Plafond-Finanzierung*) of hard coal mining by the public authorities, allocate its surplus income to a reserve in the interest of subsequently lasting and sustainable financing of the perpetual obligations. To the extent that the Foundation is permissibly bound by inter-company agreements the obligations assumed thereunder shall prevail over these rules.

#### **Article 4**

##### **Commercial activity of the Foundation**

The Foundation shall be permitted to engage in commercial activities and to provide services for investments held directly or indirectly by the Foundation or for third parties, provided that such activities serve the objective of the Foundation.

#### **Article 5**

##### **Business year**

The business year of the Foundation shall be the calendar year.



## Article 6

### Supervision

- (1) The Foundation shall be subject to government supervision in accordance with the provisions applicable to civil-law foundations with legal capacity.
- (2) The supervisory authority is the District Government in Dusseldorf. The supreme supervisory authority is the Ministry of the Interior of the State of North-Rhine Westphalia.
- (3) At the request of the supervisory authority the Board of Executives (*Stiftungsvorstand*) and the Board of Trustees (*Kuratorium*) shall provide the same with information about the affairs of the Foundation and grant insight into the books and documents of the Foundation at any time.

## Article 7

### Bodies

The bodies of the Foundation shall be the Board of Trustees and the Board of Executives.

## Article 8

### Board of Trustees

- (1) The Board of Trustees shall consist of five *ex officio* members and the further members as stated in paragraph (3). The Board of Trustees shall elect one of the further members chairman and one member from among the entire Board of Trustees deputy



chairman of the Board of Trustees. The deputy chairman shall have the powers of the chairman if and when the chairman is not available. In that case the fourth sentence of paragraph (6) shall not apply.

- (2) *Ex officio* members of the Board of Trustees shall be the persons holding the following offices:
  - (a) the Prime Minister of the State of North-Rhine Westphalia
  - (b) the Prime Minister of the State of Saarland
  - (c) the Federal Minister of Finance
  - (d) the Federal Minister of Economics and Technology
  - (e) the Chairperson of the Industrial Trade Union for Mining, Chemicals and Energy IG BCE.
  
- (3) For the period until the end of 2014 eight (8) further members shall be appointed. Three members shall be appointed by the State of North-Rhine Westphalia, three members by the Federal Republic of Germany and two members by the IG BCE. For the period from 2015 until the end of the third year after discontinuation of hard coal production at the last mine to be closed down nine (9) further members shall be appointed. Four members shall be appointed by the State of North-Rhine Westphalia, two members by the Federal Republic of Germany, one member by the State of Saarland and two members by the IG BCE. Thereafter, eight (8) further members shall be appointed. Four members shall be appointed by the State of North-Rhine Westphalia, two members by the Federal Republic of Germany, one member by the State of Saarland, and one member by the IG BCE.
  
- (4) The term of office of the further members shall be up to five (5) years. Re-appointment, even repeatedly, shall be permitted.
  
- (5) The Board of Trustees shall give itself internal rules of procedure (*Geschäftsordnung*).
  
- (6) The chairman of the Board of Trustees shall represent the Board of Trustees vis-a-vis





third parties. The chairman shall convene the meetings of the Board of Trustees and chair the meetings. The Board of Trustees shall constitute a quorum, if more than half of its members defined by the Statutes, including the chairman or his deputy, are present. *Ex officio* members may authorise a personal proxy (*persönlichen Vertreter*). Decisions of the Board of Trustees shall require a majority of two thirds of the votes cast. Every member of the Board of Trustees shall have one vote. Written circular resolutions (*Beschlüsse im schriftlichen Umlaufverfahren*) shall be permitted if all members of the Board of Trustees agree to such mode of adoption of resolutions.

- (7) The *ex officio* members of the Board of Trustees shall be entitled to reimbursement of necessary expenses. The further members of the Board of Trustees shall be paid an appropriate remuneration plus an attendance fee. They shall be entitled to reimbursement of necessary expenses and of value added tax, if applicable. The *ex officio* members of the Board of Trustees shall determine the amount of the remuneration and of the attendance fee and their adjustment.
- (8) The Board of Trustees shall have a Executive Committee (*Präsidialausschuss*), of which the chairman of the Board of Trustees and his deputy are members; the chairman of the Board of Trustees shall also be the chairman of the Executive Committee. The Board of Trustees shall elect from among its members up to two other members to the Executive Committee by a majority of two thirds of the votes cast. The term of office of the members of the Executive Committee shall be linked to their term of office as members of the Board of Trustees.

The Executive Committee shall prepare the decisions of the Board of Trustees; more details are regulated in the internal rules of procedure of the Board of Trustees. The chairman of the Board of Trustees/Executive Committee shall be in charge of long-term succession planning for the Board of Executives in coordination (*Abstimmung*) with the chairman of the Board of Executives.



## Article 9

### Tasks of the Board of Trustees

- (1) The Board of Trustees shall supervise the Board of Executives conducting the affairs of the Foundation. The Board of Trustees shall decide on the work principles of the Foundation. It shall be informed about decisions of fundamental importance to the Foundation.
  
- (2) In particular, the tasks of the Board of Trustees shall include:
  - (a) supervising the activities of the Board of Executives;
  - (b) appointing the members of the Board of Executives and dismissing them for good cause;
  - (c) approving the annual business plan and the investment guidelines to be prepared by the Board of Executives;
  - (d) controlling the budget management and business management with the assistance of a renowned firm of auditors;
  - (e) adopting the annual accounts;
  - (f) approving the internal rules of procedure for the Board of Executives;
  - (g) exonerating the actions (*Entlastung*) of the members of the Board of Executives;
  - (h) and accepting additional endowments (*Zustiftungen*).



## Article 10

### Board of Executives

- (1) The following persons are appointed members of the founding Board of Executives:  
Mr. Wilhelm Bonse-Geuking, Borken  
Mr. Gustav Adolf Schröder, Cologne  
Mr. Ulrich Weber, Krefeld.
- (2) The term of office of the members of the founding Board of Executives shall end five (5) years after the day on which the Foundation was recognised by the supervisory authority for foundations (*Stiftungsaufsicht*). In the case of resignation of one or more members of the founding Board of Executives the Board of Trustees shall appoint new members of the founding Board of Executives for the remaining term of office of the resigning members of the founding Board of Executives. If all members of the founding Board of Executives resign early, the Board of Trustees shall appoint a Board of Executives succeeding the founding Board of Executives in accordance with these Statutes.
- (3) Every subsequent Board of Executives shall consist of one chairman and at least one but not more than two other members, who shall be appointed by the Board of Trustees for a term of up to five (5) years. The Board of Trustees shall decide on the number of members of every subsequent Board of Executives. The members of every subsequent Board of Executives shall be no members of the executive board of a business enterprise in which the Foundation holds an interest at the same time.
- (4) Re-appointment, even repeatedly, of members of the founding Board of Executives and any subsequent Board of Executives (herein also referred to as "Board of Executives") shall be permitted.
- (5) The members of the Board of Executives shall at the same time be members of RAG's supervisory board.



- (6) A member of the Board of Trustees may not be a member of the Board of Executives.
- (7) The members of the Board of Executives shall receive an annual remuneration. The exact amount of the remuneration and its adjustment shall be determined by the Board of Trustees. The members of the Board of Executives shall be entitled to reimbursement of necessary expenses and of value added tax, if applicable.
- (8) Resolutions of the Board of Executives shall require a majority of votes.

## Article 11

### Tasks of the Board of Executives

- (1) The Board of Executives shall manage the business of the Foundation and represent the Foundation in and out of court. It shall have the position of a legal representative.
- (2) The Foundation shall be represented by the chairman of the Board of Executives and another member of the Board of Executives or by the chairman of the Board of Executives and an authorized officer (*Prokurist*). If the chairman of the Board of Executives is unavailable, the Foundation shall be represented by the two other members of the Board of Executives or by any member of the Board of Executives and an authorised officer. If the Board of Executives is comprised of two members only, the Foundation shall be represented by the other member of the Board of Executives and an authorised officer, if the chairman is unavailable.
- (3) Vis-a-vis members of the Board of Executives the Foundation shall be represented by the chairman of the Board of Trustees. Article 9 paragraph (2)(b) shall remain unaffected.



- (4) The Board of Executives shall manage the Foundation in accordance with the objective of the Foundation and these Statutes on its own responsibility. In particular, its tasks shall include:
- (a) managing and using the Foundation's assets to securely cover the perpetual obligations, including planning, preparing and implementing the measures described in Article 3 paragraphs (2) to (10);
  - (b) deciding on the amount of the investment defined in Article 3 paragraph (3)(b);
  - (c) deciding on the commercial activities defined in Article 4;
  - (d) reporting on and accounting for the Foundation 's activities;
  - (e) employing staff and granting commercial powers of attorney (*Handlungsvollmachten*) and special powers of representation (*Prokuren*)
- (5) The members of the Board of Executives shall act at their due discretion in the interest of the Foundation's objective with the due care and diligence of a prudent businessman (*ordentlicher Kaufmann*).
- (6) Before the end of any first quarter of a business year the Board of Executives shall report to the Board of Trustees on the material activities of the Foundation in the previous business year.
- (7) The Board of Executives may issue internal rules of procedure for itself.

## **Article 12**

### **Approval by the Board of Trustees**

- (1) The decision of the Board of Executives on the amount of the investment defined in Article 3 paragraph (3)(b) and the granting of special powers of representation laid down in Article 11 paragraph (4)(e) shall be subject to approval by the Board of Trustees. In addition, decisions that will fundamentally change the net asset position,



the financial situation or the earnings' position (*Vermögens-, Finanz- oder Ertragslage*) of the Foundation and material deviations from the business plan shall be subject to approval by the Board of Trustees.

- (2) The Board of Trustees may make no affairs (*Geschäfte*) of the Board of Executives other than those listed in paragraph (1) subject to approval by the Board of Trustees.

### Article 13

#### **Amendments to the Statutes; Combination (*Zusammenschluss*); Dissolution**

- (1) The Board of Trustees may resolve on amendments to these Statutes by a majority of two thirds of the statutory number of its members, provided that the objective of the Foundation is not materially altered thereby. The regulations in Article 3 paragraphs (2) to (6) and in Article 12 cannot be changed. Any amendment must be notified to the supervisory authority for foundations.
- (2) Any amendments to these Statutes by which the objective of the Foundation is materially altered, any combination of the Foundation with another foundation or dissolution of the Foundation may be resolved by the Board of Trustees by a majority of two thirds of the statutory number of members, if the situation changes in such a way that the fundamentals (*Grundlagen*) or the capacity to act of the Foundation are affected. If it has become impossible to achieve the objective of the Foundation, the Board of Trustees may resolve by a majority of two thirds of the statutory number of its members to change the objective of the Foundation in a way that comes as close as possible to the original objective of the Foundation. The resolutions regulated in this paragraph shall be subject to approval by the supervisory authority for foundations.
- (3) In the case of dissolution of the Foundation one third of the assets of the Foundation shall go to the Federal Republic of Germany and two thirds shall go to the States of North-Rhine Westphalia and Saarland, which shall use the same directly and



exclusively for the objectives stated in Article 2 or for other, charitable purposes. The States of North-Rhine Westphalia and Saarland shall reach an agreement on their share of the portion of two thirds.

#### **Article 14**

##### **Severability clause**

If any provision of these Statutes is or becomes ineffective, the effectiveness of the remaining provisions shall not be affected thereby. The ineffective provision shall be replaced by an effective provision which comes as close as possible to the objective pursued by the ineffective provision. The same shall apply in the case of an unintended gap in the provisions.