

Briefing Paper for the Informal Working Group on Institutional Matters

This Briefing Paper sets out the proposed scope of work for the informal working group on institutional matters ("Informal Working Group") and includes: (i) a background to the Informal Working Group; (ii) an explanation of the purpose of the Informal Working Group; and (iii) an indication of how the Informal Working Group proposes to organise its work at the upcoming meeting in March 2022.

Background

- During the second part of the twenty-fifth session, on 21 February 2020, the Council decided to establish three Informal Working Groups (IWGs), including the Informal Working Group on Institutional Matters. The mandate of these IWGs is described in those terms: “Three informal working groups will be established, initially, to advance discussions on the draft regulations on exploitation of mineral resources in the Area”... then about this IWG says: “An informal working group on institutional matters (including the role and responsibilities of the various organs of the International Seabed Authority, timelines, recourse to independent expertise, and stakeholder participation¹)”.
- The Council also decided to appoint the individuals to be designated by the regional groups as facilitators (ISBA/26/C/11). On December 2021, the Group of Latin American and Caribbean States appointed Ambassador Georgina Guillén-Grillo (Costa Rica) and Ambassador Constanza Figueroa (Chile) as the "**Co-Facilitators**" of that Informal Working Group.
- During the resumed meeting of the twenty-sixth session of the Council, the Council agreed a road map for work on the Draft Regulations in 2022 (ISBA/26/C/13/Add.1, Annex), including the work of the Informal Working Groups. The road map requires that at the March 2022 meetings, the work of the Informal Working Group is introduced by the Co-Facilitators, the scope of work is outlined, and the Informal Working Group discusses the modalities of its work.

What can we understand like institutional matters?

- Institutional arrangements are generally understood as a set of agreements on the division of the respective responsibilities of the different organs and stakeholders of an organization. The success of institutional arrangements is dependent on the existence of a clear division of responsibilities as well as a clear definition of the rights of each organ

¹ ISBA/26/C/11, Annex I, 1. (c).

and stakeholder, to avoid misunderstandings, duplication of work or omission of significant elements of work.

Scope and content

- This informal working group on “institutional matters” is the only among the four IWGs for which specific sections or provisions of the Draft Regulations have not been suggested, either by the title of the working group or by recently adopted “roadmap” for negotiation of the Draft Regulations.²
- Subject to confirmation by the Council, the table below outlines the specific provisions of the Draft Regulations that the Co-Facilitators suggest being considered by the Informal Working Group and the rationale for their inclusion:

<i>Draft Regulation</i>	<i>Rationale</i>
Part I Introduction. This section refers to: Use of terms, scope, Policies and Principles, Duty to cooperate, protection measures in respect of Coastal States.	Roles and responsibilities of the actors involved and cross cutting issues
Part II Applications for approval of Plans of Work in the form of contracts. This pertains to the roles and responsibilities of various organs of the Authority in their assessment of applications and approvals of Plans of Work.	Roles and responsibilities of the actors involved, Timelines Recourse to independent expertise Stakeholder consultations
Part V Review and modification of a Plan of Work. This section prescribes the circumstances and process for reviewing and making modifications to an approved Plan of Work.	Roles and responsibilities of the actors involved
Part VIII Annual, administrative and other applicable fees. This section is about the decisions of the various organs of the Authority and about the fees to be paid by the contractors.	Roles and responsibilities of the actors involved Timelines

² ISBA/26/C/13/Add.1, Annex, 1. (d).

<p>Part IX Information-gathering and handling. This section of the draft delineates the responsibilities of different actors about the confidentiality of the information.</p>	<p>Roles and responsibilities of the actors involved</p>
<p>Part XII Settlement of disputes. This part of the draft deals with procedures for the Authority to amend and review provisions of the regulations.</p>	<p>Institutional matters</p>
<p>Part XIII Review of these Regulations. This part of the draft deals with procedures for the Authority to amend and review provisions of the regulations.</p>	<p>Stakeholder consultations</p>
<p>Appendix II Schedule of annual, administrative and other applicable fees.</p>	<p>Institutional administrative arrangements related to fees</p>
<p>Appendix III Monetary penalties.</p>	<p>Institutional provisions related to monetary penalties</p>

- For the March Council meeting, it is proposed that the I-IWG conducts a first reading of Part I of the Draft Regulations. To do so, it is suggested that I-IWG proceeds through regulation-by-regulation discussions. A compilation of the comments made of the Draft Regulations, including Part I, has been posted on the website of the Authority.³
- Based on the discussion, the Co-Facilitators will prepare a Co-Facilitators’ Text for text-based negotiations at the July Council meeting. The Co-Facilitators’ text will be released before the July 2022 meetings in July 2022.

Structure of the Meetings

- In accordance with the road map, the Informal Working Group will meet in March 2022 to organise and discuss the modalities of its work.
- The Co-Facilitators propose that:

³ https://isa.org.jm/files/files/documents/Compiled_Comments.pdf

- a) the Informal Working Group meets in March 2022 for a day to organise and discuss its work;
- b) the Informal Working Group conducts a first reading of Part I of the Draft Regulations;
- c) the Co-Facilitators provide an oral update to the Council at the conclusion of the March 2022 meeting;
- d) following the March 2022 meeting, based on the discussions in the I-IWG, the Co-Facilitators prepare a Co-Facilitators' text with proposed amendments to Part I of the Draft Regulations for the consideration of the I-IWG at the meeting in July 2022; and
- e) the Informal Working Group meets in July 2022 for text-based negotiations based on the Co-Facilitators' text on Part I, and makes all efforts to reach consensus on proposed amendments to Part I. After finishing discussions on Part I, the Co-Facilitators will conduct a discussion of Parts II and V, and proceed regulation by regulation.

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