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**Report of the Chair of the Legal and Technical Commission on
the work of the Commission at its twenty-seventh session**

Report and recommendations of the Legal and Technical Commission on the procedure and criteria for consideration of a request for the transfer of rights and obligations under a contract for exploration

I. Introduction

1. The transfer of rights and obligations is regulated in article 20 of annex III to the United Nations Convention on the Law of the Sea, which reads:

Article 20

Transfer of rights and obligations

The rights and obligations arising under a contract may be transferred only with the consent of the Authority, and in accordance with its rules, regulations and procedures. The Authority shall not unreasonably withhold consent to the transfer if the proposed transferee is in all respects a qualified applicant and assumes all the obligations of the transferor and if the transfer does not confer to the transferee a plan of work, the approval of which would be forbidden by article 6, paragraph 3 (c), of [annex III to the Convention].

2. The content of the above article has been adopted as section 22 of the standard clauses for contracts for exploration,¹ which are annexed to the regulations on exploration. Section 22 reads:

Section 22

Transfer of rights and obligations

22.1 The rights and obligations of the contractor under this contract may be transferred in whole or in part only with the consent of the Authority and in accordance with the regulations.

22.2 The Authority shall not unreasonably withhold consent to the transfer if the proposed transferee is in all respects a qualified applicant in accordance with

¹ See [ISBA/16/A/12/Rev.1](#), annex, [ISBA/18/A/11](#), annex, and [ISBA/19/C/17](#), annex.



the regulations and assumes all the obligations of the contractor and if the transfer does not confer to the transferee a plan of work, the approval of which would be forbidden by article 6, paragraph 3 (c), of annex III to the Convention.²

22.3 The terms, undertakings and conditions of this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

3. As work under several contracts for exploration is making substantive progress, which will pave the way for developing plans of work for exploitation, some contractors may seek to avail themselves of the possibility set out in the regulations on exploration to transfer their rights and obligations under a contract for exploration. While the provisions concerning such transfer under annex III to the Convention and the regulations on exploration set out general requirements, they do not specify the actual procedure and criteria by which the Authority would consider a request for such transfer.

4. During its resumed meetings of the twenty-sixth session, in March 2021, bearing in mind the need to ensure the timely and effective management of contracts, the Legal and Technical Commission started to consider the issue of the procedure and criteria for consideration of requests for the transfer of rights and obligations under a contract for exploration. A working group was set up to work on the issues raised by the Commission. After hearing a report from the working group on 28 June 2021, the Commission decided to continue its consideration of the matter intersessionally, with a view to submitting recommendations to the Council in 2022.³

5. The Commission continued its consideration of this matter during the second part of the twenty-seventh session. The discussions focused on two substantive issues, namely, the scope of effective control and the question of subdivision of the contract area. The working group continued its work and submitted a revised draft. On 7 July, the Commission considered and adopted the revised draft procedure and criteria for consideration of a request for the transfer of rights and obligations under a contract for exploration (see annex I).

6. The draft procedure and criteria contain two appendices: (a) appendix I, on information to be contained in a request for the transfer of rights and obligations under a contract for exploration; and (b) appendix II, on the agreement between the International Seabed Authority, the contractor and the transferee concerning the transfer of rights and obligations under the contract for exploration for mineral resource between the Authority and the contractor.

II. Recommendations

7. The Commission recommends that the Council consider, with a view to adopting, the procedure and criteria for consideration of a request for the transfer of rights and obligations under a contract for exploration contained in annex I to the present document.

8. In terms of the form in which the procedure and criteria are to be adopted, it is recommended that the Council use its general supervisory powers under article 162, paragraphs 2 (a) and (l), of the Convention, to give effect to the procedure and criteria in the form of a decision. A draft decision for consideration and adoption by the Council is contained in annex II to the present document.

² The text starting “and if the transfer” does not appear in document [ISBA/18/A/11](#).

³ See [ISBA/26/C/12/Add.2](#), para. 33.

Annex I

Draft procedure and criteria for consideration of a request for the transfer of rights and obligations under a contract for exploration

Proposed by the Legal and Technical Commission

I. Form and content of a request for the transfer of rights and obligations under a contract for exploration

1. A contractor may submit a request for the transfer of rights and obligations under its contract with the Authority in accordance with the procedure set out below.
2. Requests for the transfer of rights and obligations, in whole or in part, under a contract shall be made jointly by the transferor and the proposed transferee, in writing, addressed to the Secretary-General of the International Seabed Authority, and shall contain the information set out in appendix I to the present document. Requests for the transfer of rights and obligations, in whole or in part, to a partnership or consortium of entities shall contain the information set out in appendix I to the present document in respect of each member of the partnership or consortium.
3. Such requests may be made at any time during the term of the contract but no later than 12 months before the expiration of the contract in respect of which the request is made.
4. Unless otherwise indicated by the sponsoring State or States at the time that the request for transfer is made, sponsorship of the transferor shall be deemed to continue and the sponsoring State or States shall continue to assume responsibility in accordance with articles 139 and 153, paragraph 4, of the United Nations Convention on the Law of the Sea and article 4, paragraph 4, of annex III thereto. The transferee shall submit, at the time of the request, a certificate of sponsorship from its sponsoring State or States. If the transferee has more than one nationality, as in the case of a partnership or consortium of entities from more than one State, then each State involved shall issue a certificate of sponsorship. Where the sponsoring State or States of the transferee is different from that or those of the transferor, the transferee shall also submit a notice from the sponsoring State or States of the transferor that they consent to the transfer with the request.
5. The fee for processing a request for the transfer of rights and obligations shall be a fixed amount of \$67,000 or its equivalent in a freely convertible currency, to be paid in full at the time of the submission of a request.

II. Processing of a request for the transfer of rights and obligations under a contract for exploration

6. The Secretary-General shall:
 - (a) Acknowledge in writing the receipt of a request for the transfer of rights and obligations under a contract for exploration, specifying the date of receipt;
 - (b) Notify the sponsoring State or States of the receipt of the request and of the requirement set out in paragraph 4 above;
 - (c) Place the request, together with the attachments and annexes thereto, in safe custody and ensure the confidentiality of all confidential data and information contained in the request;

(d) Notify the members of the Authority of the receipt of such a request and circulate to them non-confidential information of a general nature regarding the request;

(e) Notify the members of the Legal and Technical Commission and include consideration of the request as an item on the agenda for the following meeting of the Commission.

III. Consideration by the Legal and Technical Commission

7. The Commission shall consider requests for the transfer of rights and obligations under a contract for exploration at its next available meeting, provided that the documentation pertaining to the request was circulated to the Commission at least 30 days before that meeting.

8. The Commission shall consider requests expeditiously, at the first possible opportunity, taking into account the schedule of meetings of the Authority, and in the order in which they are received.

9. The Commission shall consider and review the data and information provided by the transferor and the proposed transferee in compliance with appendix I. For the purposes of the review, the Commission may request the transferor and the proposed transferee to submit additional data and information as may be necessary regarding the proposed transferee's ability to implement the plan of work and comply with the standard clauses of the existing contract. Such additional data and information shall be submitted to the Commission within 45 days of their being requested.

10. In discharging its duties, the Commission shall apply the procedure and criteria herein defined, the relevant provisions of the Convention and the rules, regulations for the specific mineral resource and procedures of the Authority in a uniform and non-discriminatory manner.

11. If the Commission finds that a request for the transfer of rights and obligations under a contract for exploration does not comply with the procedure, or the transferor or the proposed transferee fails to provide the data and information requested by the Commission, it shall notify the transferor and the proposed transferee in writing, through the Secretary-General, indicating the reasons.

12. The transferor and proposed transferee may, within 45 days of receiving such a notification, amend their request. If the Commission, after further consideration, is of the view that it should not recommend consent to the transfer of rights and obligations under a contract for exploration, it shall inform the transferor and the proposed transferee, through the Secretary-General, and provide the transferor and the proposed transferee with a further opportunity to make presentations within 30 days. The Commission shall consider any such presentations made by the transferor in preparing its report and recommendation to the Council.

13. The Commission shall recommend approval of the request for the transfer of rights and obligations under a contract for exploration if:

(a) It considers that the proposed transferee is in all respects a qualified applicant in accordance with the regulations for the specific mineral resource;

(b) The proposed transferee has produced a certificate of sponsorship in accordance with articles 139 and 153, paragraph 4, of the Convention and article 4, paragraph 4, of annex III thereto;

- (c) The proposed transferee undertakes to assume all the obligations of the transferor, including obligations in relation to the protection of the marine environment;
 - (d) The administrative fee as set out in paragraph 5 above has been paid;
 - (e) In the case of contracts signed in accordance with:
 - (i) The regulations on prospecting and exploration for polymetallic nodules in the Area or the regulations on prospecting and exploration for polymetallic sulphides in the Area, the transfer does not confer to the transferee a plan of work, the approval of which would be forbidden under article 6, paragraph 3 (c), of annex III to the Convention;
 - (ii) The regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area or the regulations on prospecting and exploration for polymetallic sulphides in the Area, the transfer does not confer to the transferee a plan of work in contravention of regulation 23.7.
14. The Commission shall submit its recommendations to the Council at the first possible opportunity, taking into account the schedule of meetings of the Authority.

IV. Consideration by the Council

15. The Council shall consider the information submitted by the proposed transferee, the recommendations of the Commission relating to the request for the transfer of rights and obligations under a contract for exploration in accordance with paragraphs 11 and 12 of section 3 of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.
16. In accordance with article 20 of annex III to the Convention, the Council shall not unreasonably withhold consent to a transfer if the requirements of the regulations for the specific mineral resource are complied with.
17. Upon approval by the Council, a transfer of rights and obligations under a contract for exploration shall be effected by the execution of a signed agreement between the Secretary-General, the authorized representative of the transferor and the authorized representative of the transferee in the form set out in appendix II to the present document.
18. The terms, undertakings and conditions of the contract shall enure to the benefit of and be binding upon the parties thereto and their respective successors and assignees as of the date of the transfer, pursuant to the regulations for the specific mineral resource.

Appendix I

Information to be contained in a request for the transfer of rights and obligations under a contract for exploration

A request for the transfer of rights and obligations under a contract for exploration shall consist of the following:

Section I

Information concerning the proposed transferee

1. Name of the proposed transferee:
2. Nationality of the proposed transferee:
3. Street address of the proposed transferee:
4. Postal address (if different from above):
5. Telephone number:
6. Fax number:
7. Email address:
8. Name of the proposed transferee's designated representative:
9. Street address of the proposed transferee's designated representative (if different from above):
10. Postal address (if different from above):
11. Telephone number:
12. Fax number:
13. Email address:
14. If the proposed transferee is a juridical person:
 - (a) Identify the proposed transferee's place of registration;
 - (b) Identify the proposed transferee's principal place of business/domicile;
 - (c) Attach a copy of the proposed transferee's certificate of registration.
15. Whether the proposed transferee has paid any monetary consideration for the transfer.
16. Identity of the sponsoring State or States.
17. In respect of each sponsoring State, provide the date of deposit of its instrument of ratification of or accession or succession to the United Nations Convention on the Law of the Sea and the date of its consent to be bound by the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.
18. A certificate of sponsorship issued by the sponsoring State. If the proposed transferee has more than one nationality, as in the case of a partnership or consortium of entities from more than one State, certificates of sponsorship issued by each of the States involved must be attached.

Section II Information relating to the rights and obligations being transferred (in case of partial transfer)

19. In case of a partial transfer of rights and obligations, a specification of the rights and obligations under the contract that are being transferred, as well as any proposed amendments to the accompanying plan of work, taking into consideration article 20 of annex III to the Convention.

Section III Financial and technical information

20. Sufficient information to enable the Legal and Technical Commission and the Council to determine whether the proposed transferee is financially capable of carrying out the plan of work for exploration and of fulfilling its financial obligations to the Authority under the contract, as follows:

(a) If the proposed transferee is the Enterprise, attach a certification by its competent authority that the Enterprise has the necessary financial resources to meet the estimated costs of the plan of work for exploration;

(b) If the proposed transferee is a State or a State enterprise, a statement by the State or the sponsoring State certifying that the proposed transferee has the necessary financial resources to meet the estimated costs of the plan of work for exploration;

(c) If the proposed transferee is a natural or juridical person, attach copies of the proposed transferee's audited financial statements, including balance sheets and profit-and-loss statements, for the most recent three years in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants. In addition:

(i) If the proposed transferee is a newly organized entity and a certified balance sheet is not available, a pro forma balance sheet certified by an appropriate official of the proposed transferee;

(ii) If the proposed transferee is a subsidiary of another entity, copies of such financial statements of that entity and a statement from that entity in conformity with internationally accepted accounting practices and certified by a duly qualified firm of public accountants that the proposed transferee will have the financial resources to carry out the plan of work for exploration;

(iii) If the proposed transferee is controlled by a State or a State enterprise, a statement from the State or State enterprise certifying that the proposed transferee will have the financial resources to carry out the plan of work for exploration.

21. If the proposed transferee intends to finance the plan of work for exploration by borrowings, attach a statement of the amount of such borrowings, the repayment period and the interest rate.

22. Sufficient information to enable the Commission and the Council to determine whether the proposed transferee is technically capable of carrying out the plan of work for exploration, including:

(a) A general description of the proposed transferee's previous experience, knowledge, skills, technical qualifications and expertise relevant to the plan of work for exploration;

(b) A general description of the equipment and methods expected to be used in carrying out the plan of work for exploration and other relevant non-proprietary information about the characteristics of such technology;

(c) A general description of the proposed transferee's financial and technical capability to respond to any incident or activity that causes serious harm to the marine environment.

Section IV Undertakings

23. A written undertaking that the proposed transferee will:

(a) Accept as enforceable and comply with the applicable obligations created by the provisions of the Convention and the rules, regulations and procedures of the Authority, the decisions of the relevant organs of the Authority and the terms of its contracts with the Authority;

(b) Accept control by the Authority of activities in the Area as authorized by the Convention;

(c) Provide the Authority with a written assurance that its obligations under the contract will be fulfilled in good faith.

Section V Previous contracts

24. If the proposed transferee or, in the case of a transfer to a partnership or consortium of entities in a joint arrangement, any member of the partnership or consortium has previously been awarded a contract with the Authority, the request must include:

(a) The date of the previous contract or contracts;

(b) The date, reference number and title of each report submitted to the Authority in connection with the contract or contracts;

(c) The date of termination of the contract or contracts, if applicable.

Section VI
Attachments

25. List all the attachments and annexes to the request (all data and information should be submitted in hard copy and in the digital format specified by the Authority).

Date:

Signature of transferor's designated representative

Attestation:

Signature of person attesting

Name of person attesting

Title of person attesting

Appendix II

Agreement between the International Seabed Authority, [contractor] and [transferee] concerning the transfer of rights and obligations under the contract for exploration for [mineral resource] between the Authority and [contractor], dated [date]

[In case of whole transfer]

The International Seabed Authority, represented by its Secretary-General, [contractor], represented by [...] (hereinafter referred to as “the contractor”), and [transferee] agree that [contractor] transfers its rights and obligations under the contract for exploration for [mineral resource] between the Authority and the contractor signed on [date] at [place] to [transferee] and that the terms, undertakings and conditions of the contract shall enure to the benefit of and be binding upon the parties thereto and their respective successors and assigns.

The present agreement shall enter into force on [date].

In witness whereof, the undersigned, being duly authorized thereto by the respective parties, have signed the present agreement at [place] on [date].

[In case of partial transfer]

The Authority, represented by its Secretary-General, [contractor], represented by [...] (hereinafter referred to as “the contractor”), and [transferee] agree that [contractor] transfers the following rights and obligations under the contract for exploration for [mineral resource] between the Authority and the contractor signed on [date] at [place] to [transferee]:

[Specification of the rights and obligations being transferred, as well as any amendment to the accompanying plan of work]

The contract shall continue in all other respects with full force and effect. The terms, undertakings and conditions of the contract shall enure to the benefit of and be binding upon the parties thereto and their respective successors and assigns.

The present amendment shall enter into force on [date].

In witness whereof, the undersigned, being duly authorized thereto by the respective parties, have signed the present agreement at [place] on [date].

Annex II

Draft decision of the Council of the International Seabed Authority relating to the procedure and criteria for consideration of a request for the transfer of rights and obligations under a contract for exploration, pursuant to article 20 of annex III to the United Nations Convention on the Law of the Sea

The Council of the International Seabed Authority,

Recalling that, pursuant to article 162, paragraphs 2 (a) and (l), of the United Nations Convention on the Law of the Sea,¹ the Council shall supervise and coordinate the implementation of the provisions of part XI of the Convention on all questions and matters within the competence of the Authority and shall exercise control over activities in the Area in accordance with article 153, paragraph 4, of the Convention and the rules, regulations and procedures of the Authority,

Recalling also article 20 of annex III to the Convention and section 22 of the standard clauses for contracts for exploration concerning the transfer of rights and obligations,

Noting that while the provisions concerning such transfer under annex III to the Convention and the standard clauses for contracts for exploration set out general requirements, they do not specify the detailed procedure and criteria by which the Authority would consider a request for such transfer,

Bearing in mind that as work under several contracts for exploration is making substantive progress, which will pave the way for developing plans of work for exploitation, some contractors may seek to avail themselves of the possibility set out in the regulations on exploration to transfer their rights and obligations under a contract for exploration,

Taking into account the recommendations of the Legal and Technical Commission,²

1. *Adopts* the procedure and criteria for the consideration of a request for the transfer of rights and obligations under a contract for exploration pursuant to article 20 of annex III to the United Nations Convention on the Law of the Sea, as contained in the annex to the present decision;

2. *Requests* the Secretary-General to communicate the present decision to all contractors with the Authority and their sponsoring State or States.

¹ United Nations, *Treaty Series*, vol. 1833, No. 31363.

² [ISBA/27/C/35](#).