

Briefing Paper on the work of the Plenary concerning the draft regulations and the consideration of phase one draft standards and guidelines

Prepared by the President of the Council

Background

1. This Briefing Paper seeks to address how the Council will progress its work on the other aspects of the Draft Regulations that are not currently being reviewed within the context of any of the informal working groups or the open-ended working group on the financial terms of a contract. This note also provides an indication on how the Council will organize its work for the remaining part of the 27th session during 2022 as it relates to its agenda item 11, Draft regulations on exploitation of mineral resources in the Area (ISBA/25/C/WP.1) ("**Draft Regulations**").
2. The Council will recall that during the first part of the 27th session and in line with its decision ISBA/26/C/11, it advanced discussions on the Draft Regulations through its three established informal working groups (IWG). The open-ended working group on the financial terms of a contract (OEWG) also held its fourth meeting to progress discussions in this regard.
3. Currently, each of the IWGs and the OEWG are considering the following parts of the draft regulations (ISBA/25/C/WP.1) as shown in the table below.

Informal Working Group on the Environment	Part IV, Part VI, Annex IV, Annex VII, Annex VIII
Informal Working Group on Inspection Compliance and Enforcement	Part XI
Informal Working Group on Institutional matters	Part I, Part II, Part V, Part VIII, Part IX, Part XII, Part XIII, Appendix II, Appendix III
Open- ended Working Group on the financial terms of a contract	Part VII, Appendix IV

Role of the Plenary

4. In light of the above, and in view of the heavy workload of the informal working groups and the open-ended working group, I propose that the parts of the Draft Regulations listed below be reviewed by the plenary, albeit in an informal format:
 - Preamble;
 - Part III.- Rights and obligations of Contractors;

- Part X.- General procedures, Standards and Guidelines;
- Annex I. – Application for approval of a plan of work to obtain an exploitation contract;
- Annex II. – Mining workplan;
- Annex III. – Financing Plan;
- Annex V. Emergency Response and Contingency Plan;
- Annex VI. – Health and Safety Plan and Maritime Security Plan;
- Annex IX. – Exploitation contract and schedules;
- Annex X. – Standard clauses for exploitation contract;
- Appendix I. - Notifiable events;
- Schedule. - Use of terms and scope.

5. I further propose that should any of the Informal Working Groups finish its task as identified in paragraph 3 before the end of the 27th Session, the Council plenary could consider re-allocating some annexes to that informal working group, if they have not already been considered by the plenary.

6. Considering the above, for the second part of the Council meeting in July, I propose that the plenary undertakes a first reading of Part X of the Draft Regulations through regulation-by-regulation discussions. Then I propose that the plenary continues with the Preamble and Part III. Like the Facilitators of the IWGs, I will prepare a revised text based on the discussion and proposals made in July and that revised text will be considered during the third part of the Council later in the year. I further propose that we devote some time to discuss the Schedule, Appendix I and any outstanding Annexes (i.e. not allocated to an informal working group) during the third meeting of the twenty-seventh session of the Council in 2022.

Standards and Guidelines, and proposed working method for forthcoming meetings in 2022

7. In 2019, the Council requested the Commission to work on standards and guidelines as a matter of priority. Furthermore, in the decision of the Council in ISBA/26/C/57, the Council has noted with appreciation the Commission's recommendation of draft phase one standards and guidelines in accordance with the process for the development of standards and guidelines contained in enclosure II of ISBA/25/C/19/Add.1. In addition, in the same decision, the Council expressed its intention to make every effort to ensure the thorough and timely development of the regulations, bearing in mind that necessary standards and guidelines should be developed in parallel and be consistent with the finalization of the regulations as a package.

8. In view of the above, the Commission has delivered to the Council for its consideration phase one draft standards and guidelines which have been translated in the official languages of the Authority as requested by the Council at its last meeting (ISBA/26/C/57). The

Commission has devoted a great deal of time and effort over the course of the past eighteen months. The Commission should be commended for this work.

9. I believe that it is now for the Council to consider these documents. The Council needs to develop an approach to consider them given that, the draft regulations are still under negotiations and the standards and guidelines will need to be reviewed when the text of the Regulations is stable. The importance for the Council on having these drafts prepared by the Commission is that it allows the Council to have a general perspective and an overview on how the regulatory package is shaping up.

10. In this connection, the Council is invited to consider the following approach:

- Based on the Facilitator's texts that will be produced for consideration by the informal working groups in July, I propose that the Council continue negotiating the text of the draft regulations and take stock by the end of the July meeting on the progress achieved on the draft regulations in order to consider options for discussion of phase one draft standards and guidelines during 2022;
- This is without prejudice to the consideration of proposals and textual suggestions made by delegations once the Council continues with the discussion of the phase one draft standards and guidelines at a later stage in 2022;
- The above is also without prejudice to the decision of the Council according to which necessary standards and guidelines should be developed in parallel and be consistent with the finalization of the regulations as a package. In that regard, I shall recall that "nothing is agreed until everything is agreed".

Organization of the discussions in July

11. For the discussions regarding item 11 on the agenda of the Council during the two-week meetings in July, I suggest the following:

- (a) The **plenary** will meet for three days to discuss agenda item 11 and any other outstanding items of its agenda (ISBA/27/C/1);
- (b) The **Open-ended Working Group** will meet for two days;
- (c) The Informal Working Group on the protection and preservation of the Environment will meet for two days and a half;
- (d) The Informal Working Group on Inspection, Compliance and Enforcement will meet for one day;
- (e) The Informal Working Group for Institutional Matters will meet for one day and a half.

Review of progress

12. I believe that by the end of the July session, the outcomes achieved within the different streams of work will provide the Council with a better metric on how to assess the progress achieved in preparation for the third part of the session in the last quarter of the year.

13. Regarding intersessional work, in light of the discussion in the Informal Working Group on the protection and preservation of the marine environment, I note that the Facilitator will host one webinar on the Environmental Compensation Fund and the Sustainability Fund.

14. As at this critical juncture, I believe that face-face meetings are more conducive to advance the work on the Draft Regulations. In addition, I recall that as decided by the Council, "All the informal working groups will meet during sessions of the Council and no meetings will be held in parallel." (ISBA/26/C/11).

Recommendations

15. In summary, I propose that in July, the Council discusses Part X, the preamble and Part III of the draft regulations. Discussion on the Schedule will be programmed for the third meeting of 2022.

16. With respect to phase one draft standards and guidelines, I propose that the Council continue negotiating the text of the draft regulations and take stock by the end of the July meeting of the progress achieved on the draft regulations. Based on that, at its meetings in July, the Council will consider options for discussion of phase one draft standards and guidelines during 2022.

31 March 2022