



Foreign &
Commonwealth
Office

Workshop on the Development of Standards and Guidelines for the Mining Code

Regulatory framework: Where are we now?
Where do we need to be? How are we going
to get there? (*incorporating terminology*)

isa.org.jm



| Chris Brown | ISA Consultant

1. Where are we now?



THE ISA MINING CODE Rules, regulations and procedures



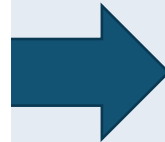
- Exploration regulations + Commissions recommendations
- Draft exploitation regulations (ISBA/25/C/WP.1 + ISBA/25/C/18)
- Content and development of standards and guidelines (ISBA/25/C/3)
- Other key areas under development
 - Financial terms
 - Interfaces: sponsoring States, flag States



LEGAL FRAMEWORK (Rules, Regulations and Procedures)

Convention anticipated the need for:

- “mining standards and practices, including those relating to operational safety, conservation of the resources and the protection of the marine environment”
- (Annex III, article 17 (1) (b) (xii))



Draft exploitation regulations

- Regs. to be supplemented by S&Gs (reg. 1(5))
- Safety, labour and health standards (reg. 30)
- Environmental Standards (reg. 45) (new)
- Adoption of Standards by Council (reg. 94) (modified)
- Issue of Guidelines (technical or administrative) by LTC or SG (reg. 95)
- (Other standard and guideline references within regulatory text)



2. Where do we need to be?



A RISK-BASED APPROACH

- The “what” to regulate and “how” (and “when”) to regulate it
- Risk-based approach to regulation
 - Risk-based regulation (risk assessment framework)
 - Application of environmental and other standards
 - Evidence-based decision-making
 - Better alignment of regulatory resources
- Certainty and predictability
- Document policy approach to regulation

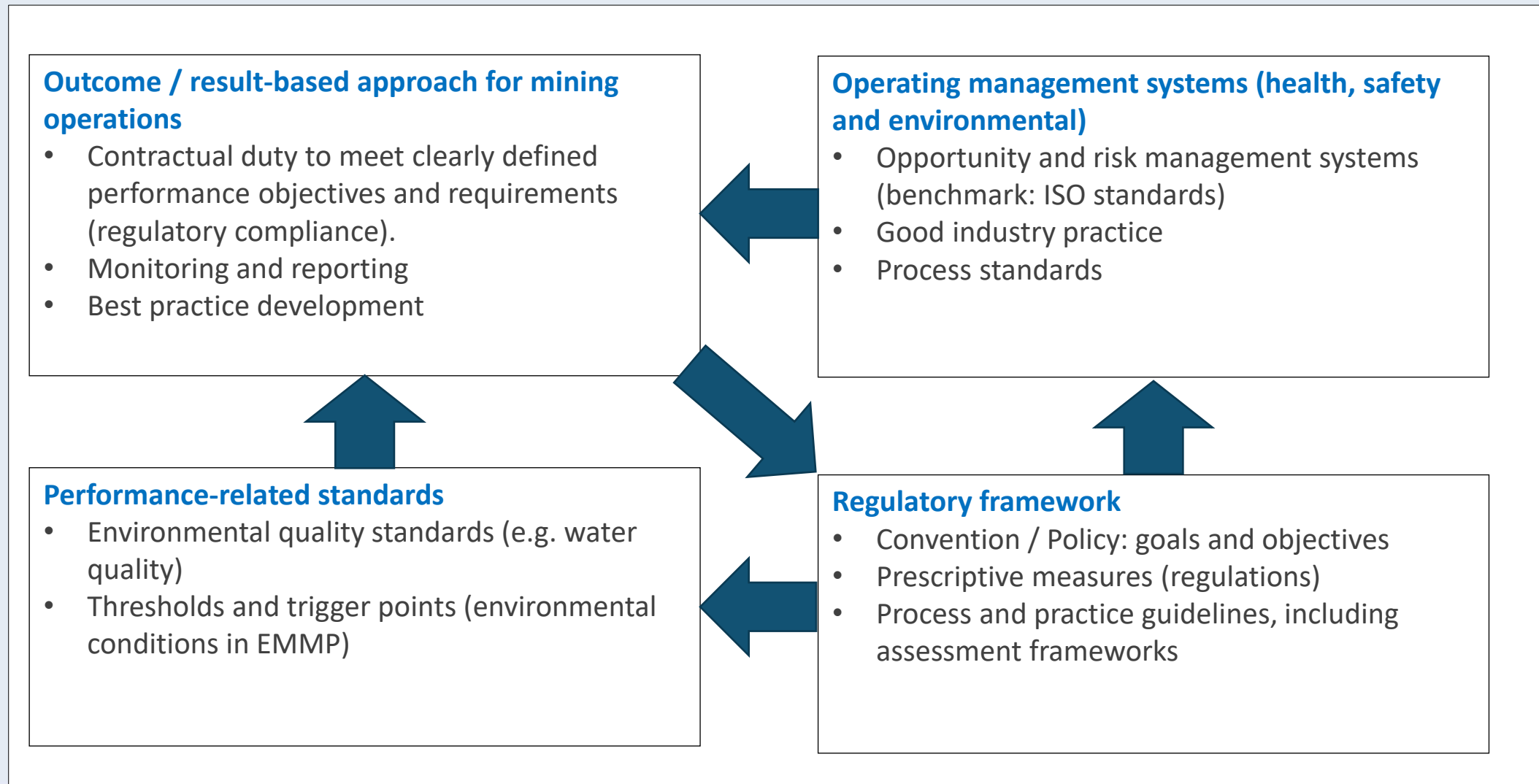


OUTCOME OR RESULT-BASED REGULATION

- A performance-based regime
- Clearer accountability
- Focuses on producing the desired performance (e.g. environmental performance) not the production of more rules
- Determine the output or performance levels e.g. objectives, criteria, quality standards, thresholds, trigger points (contractual requirements)
- Contractor flexibility in delivering the output or performance level
- Constraint: state of existing knowledge
- Focus on processes to get us there



OUTCOME- (RESULT) BASED APPROACH TO ON-GOING REGULATION



ISBA/25/C/3

- **Process-related standards**

- A practice that is widely recognised or employed, especially because of its excellence; it is a way of doing work that is widely accepted as good (or even best) practice (standardisation)
- Generally voluntary; may be referenced by regulators e.g. in guidance documents
- Example: ISO 14001:2015 international process-related standard but regional / national variations
- May be other specific DSM “standards” e.g. measurement of ore for royalty purposes

- **Performance-related standards**

- Important to outcome or result-based approach to regulation
- Setting specific operational standards (e.g. environmental quality standards, H&S)
- Annex IV (EMMP): “A description of relevant environmental performance standards and indicators (trigger and threshold points)”



ISBA/25/C/3

- **Guidelines**

- Offer process and practice guidance e.g. may reference standards, outline good practice and disseminate best practices
- Provide interpretative guidance on regulatory text
- Promote understanding of and compliance with regulatory requirements
- Easier to amend: flexibility

- **Standards and guidelines**

- Not mutually exclusive: complementary
- Compliance with documents: evidence that regulatory measures are complied with



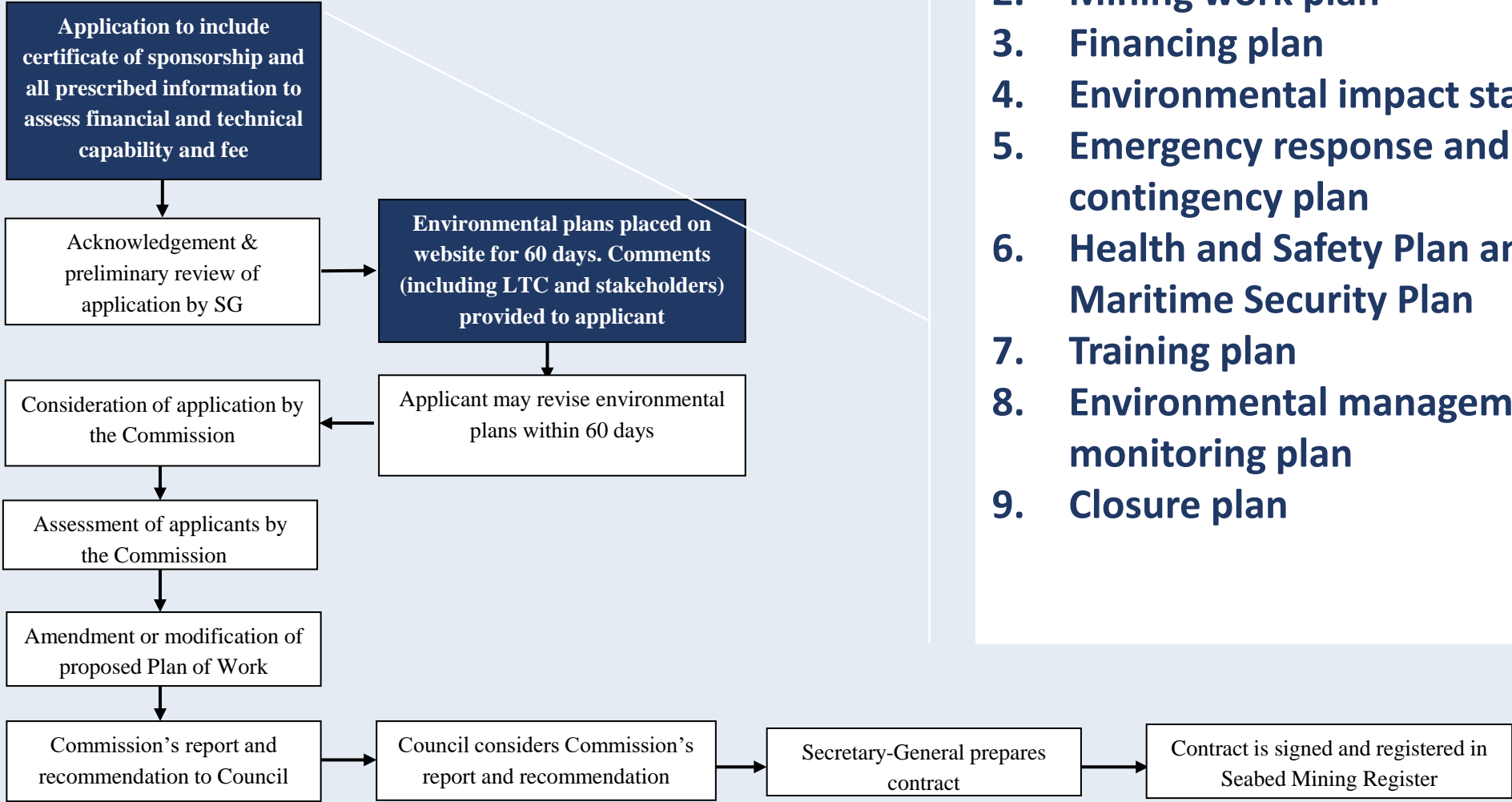
3. How are we going to get there?

GETTING THERE

- Comprehensive list of documents for development: thematic themes (“what”) (ISBA/25/C/3 = starting point)
- Process outline for documentation development (“how”)
- Timelines: What do we know? What do we need to know? When will we know it? (“when”)
- Phased approach: What is critical and to be put in place soonest? What can or simply has to wait?
- Consider other regulatory approaches and documents: What is existing and potentially transferable? What needs to be developed?
- Better understanding of the technology (engineering)
- Formulate detailed work development programme



Application



1. Exploration data and information
2. Mining work plan
3. Financing plan
4. Environmental impact statement
5. Emergency response and contingency plan
6. Health and Safety Plan and a Maritime Security Plan
7. Training plan
8. Environmental management and monitoring plan
9. Closure plan



4. Closing remarks



Closing remarks

1. This workshop is an important milestone in the regulatory development programme
2. Need to ensure a level playing field: Where do we need to “standardise”? Where should flexibility be accommodated?
3. Dialogue: What do contractors need to know from the ISA? What does the ISA need to know from contractors?
4. Don't have to reinvent the wheel: Draw on experiences of regulatory approaches to natural resource and environmental regulation, and related documentation





Thank you!

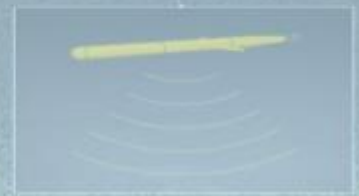
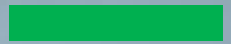


Image courtesy of Global Sea Mineral Resources

