

TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH SESSION: COUNCIL - PART III

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council2022@isa.org.jm.

1. Name(s) of Delegation(s) making the proposal:

Canada

2. Please indicate the relevant provision to which the textual proposal refers.

DR 89

3. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

Part IX
Information-
gathering and
handling
Regulation 89
Confidentiality of
information

1. There shall be a presumption that any data and information regarding the Plan of Work, exploitation contract, its schedules and annexes or the activities taken under the exploitation contract are public, other than Confidential Information.

2. “Confidential Information” means:

(a) Data and information that have been designated as Confidential Information by a Contractor in consultation with the Secretary-General under the Exploration Regulations and which remains Confidential Information in accordance with the Exploration Regulations;

(b) Data and information relating to personnel matters, the health records of individual employees or other documents in which employees have a reasonable expectation of privacy, and other matters that involve the privacy of individuals;

(c) Data and information which have been categorized as Confidential Information by the Council; and

(d) Data and information designated by the Contractor as Confidential Information at the time it was disclosed to the Authority, provided that, subject to paragraph 5 below, such designation is deemed to be well founded by the Secretary General on the basis that there would be substantial risk of serious or unfair economic prejudice if the data and information were to be released;

3. “Confidential Information” does not mean or include data and information that:

(a) Are generally known or publicly available from other sources;

(b) Have been previously made available by the owner to others without an obligation concerning its confidentiality;

(c) Are already in the possession of the Authority with no obligation concerning its confidentiality;

(d) Are required to be disclosed under the Rules of the Authority to protect the Marine Environment or human health and safety;

(e) Are necessary for the formulation by the Authority of rules, regulations and procedures concerning the protection and preservation of the Marine Environment and safety, other than equipment design data;

(f) Relate to the protection and preservation of the Marine Environment, provided that the Secretary-General may agree that such information is regarded as Confidential Information for a reasonable period where there are bona fide academic reasons for delaying its release;~~or~~

(g) Are an award or judgment in connection with activities in the Area (save in relation to any Confidential Information contained in such award or judgment which may be redacted);~~or where:~~

(h) Relate to contractor payments to the Authority, governments, state enterprises, other contractors, as well as payments and other forms of financial benefit received by the contractor from Sponsoring States; or

(i) Relate to beneficial ownership of contractors; or

~~(e)~~(j) Relate to Sponsorship Agreements or other contractual arrangements between contractors and Sponsoring States; or

~~(h)~~(k) The Contractor to which the data and information relates has given prior written consent to its disclosure;~~or~~

~~(i)~~(l) The area to which the data and information relates is no longer covered by an exploitation contract; provided that following the expiration of a period of 10 years ISBA/25/C/WP.1 56/117 19-04869 after it was passed to the Secretary-General, Confidential Information shall no longer be deemed to be such unless otherwise agreed between the Contractor and the Secretary-General, and save any data and information relating to personnel matters under paragraph 2 (b) above.

4. Confidential Information will be retained by the Authority and the Contractor in strictest confidence in accordance with regulation 90 and shall not be disclosed to any third party without the express prior written consent of the Contractor, which consent shall not be unreasonably withheld, conditioned or delayed, save that Confidential Information may be used by the Secretary-General and staff of the Authority's secretariat, as authorized by the Secretary-General, and by members of the Commission as necessary for and relevant to the effective exercise of their powers and functions.

5. In connection with paragraph 2 (d) above, a Contractor shall, upon transferring data and information to the Authority, designate by notice in writing to the Secretary - General the Information or any part of it as Confidential Information. If the Secretary General objects to such designation within a period of 30 Days, the parties shall consult upon the nature of the data and information and whether it constitutes Confidential Information under this regulation. During the consultations, the Secretary-General shall take into account any relevant policy guidance from the Council. Any dispute arising as to the nature of the data and information shall be dealt with in accordance with Part XII of these regulations.

6. Nothing in these regulations shall affect the rights of a holder of intellectual property

4. Please indicate the rationale for the proposal. [150 word limit]

Contractor payments to the Authority, governments, state enterprises, other contractors, as well as payments received by the contractor from Sponsoring States, should be disclosed publicly in line with terrestrial mining best practices. This is in line with International standards, like the Extractives Industries Transparency Initiative (EITI), and national best practices, such as the Extractives Sector Transparency Measures Act (ESTMA) in Canada which requires that certain businesses involved in the commercial development of oil, gas and minerals report the payments they make to governments in Canada and abroad.

Payments to the contractor from Sponsoring States should also be disclosed. This information will be needed to determine the effective tax rate for contractors and enable reviews of the system of payment.

Sponsorship Agreements should also be fully disclosed. A definition for these may be required in the Schedule: use of terms and scope.

Beneficial ownership of contractors should also be disclosed as per best practice.

Thresholds for such information disclosure requirements may need to be defined.

This information should be made accessible through the Seabed Mining Register.

State enterprises is referred to in AGXI/A/S6(1)(d)(ii). However, something more definitive may be needed into the Schedule or Standards/Guidelines. Payments to sponsoring states will be important for determining a nodule transfer price in the future.

The Council may wish to consider additional edits to DR 89 to enhance transparency and also whether the details on confidentiality should be moved to a Standard to better capture evolving best practices regarding information disclosure in the extractives sector.