

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH SESSION:
COUNCIL – Part III**

–Open Ended Working Group

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 82

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.

Regulation 82

Review of Rates of Payments

1. The rates of payments under an existing system of payments shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and every five years thereafter, applying to all contractors that have commenced Commercial Production, unless otherwise determined by the Council, and at intervals thereafter as determined by the Council, taking into account the Resource category and the level of maturity and development of Exploitation activities in the Area.

2. The Council, based on the recommendations of the Commission, the Economic Planning Commission, and an independent third party expert, and in consultation with Contractors, may adjust the rates of payments in light of such recommendations and consultation, ~~save that any adjustment to the rates of payments may only apply to existing exploitation contracts from the end of the Second Period of Commercial Production reflected in appendix IV to these regulations.~~

3. Without limiting the scope of any review by the Council, a review under this regulation may include an adjustment to the Applicable Royalty Rate under appendix IV and the manner and basis of the calculation of a royalty, including triggers for price-based royalties.

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

DR 82 currently states that rates shall be reviewed five years following the first date of commercial production and at intervals thereafter as determined by the Council. It also states that “the adjustment

of rates of payments may only apply to existing exploitation regulation contracts from the end of the Second Period of Commercial Production reflected in appendix IV to these regulations”.

However, while paragraph 1 (C) of section 8 of the Annex to the Agreement indicates that “a change to a system of payments may apply to existing contracts only at the election of the contractor” no such requirement is laid out regarding a change to rates.

The fiscal stabilization provisions currently included in DR 82 are inconsistent with current global norms, as evidenced by the 2020 OECD Guiding Principles on Durable Extractive Contracts

It is proposed to have a simple, regular review of rate of payments every 5 years following the commencement of Commercial Production in the Area.

The responsibility for review could be on the LTC or the Economic Planning Commission, or both. The review should be done in consultation with a third party independent expert who may need to model financial data and audit contractors to propose revisions to royalty rates.

The regulation should be clear about what constitutes a review of system of payments vis-à-vis a review of rates of payment. A review of rates of payment should explicitly include reference to price “triggers” under variable royalty rate regimes.