

**Written Responses by Singapore to the Co-Facilitators' Questions in the context of the  
Informal Intersessional Dialogue pursuant to Council Decision ISBA/27/C/45**

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This document sets out Singapore's written responses to the questions posed in paragraph 8 of the "*Co-Facilitators' Note on the webinar in the context of the informal intersessional dialogue to facilitate further discussion on the possible scenarios and any other pertinent legal considerations in connection with section 1, paragraph 15, of the annex to the Agreement relating to the implementation of Part XI of the United Nations on the Law of the Sea*" (as attached to the Secretariat's Note No. ISA/OLA/2023/046). Singapore's written responses are strictly limited to the possible scenarios and other pertinent legal considerations in connection with section 1, paragraph 15, of the annex to the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea ("the Part XI Agreement"), in particular the legal interpretation of the said provision, and are without prejudice to Singapore's right to amend or add to its positions on the matters addressed.

***Question (1). What is the meaning of the phrase "consider and provisionally approve" in subparagraph (c)? Can the Council disapprove a plan of work after having considered it? Can the consideration of a pending application be postponed until certain conditions are met? Does the use of the word "elaboration" in subparagraph (c) carry any legal significance?***

2. The phrase "*consider and provisionally approve*" in subparagraph (c) provides for the possibility of the Council disapproving an application for a plan of work after having considered it. This is consistent with the object and purpose of the Part XI Agreement. Subparagraph (c) itself requires the Council to not only consider the application, but also make its decision on the basis of whether an application complies with the relevant provisions, norms and principles of the United Nations Convention on the Law of the Sea ("UNCLOS") and the Part XI Agreement, any provisionally adopted rules, regulations and principles ("RRPs"), and the principle of non-discrimination against contractors. This exercise means that the Council's provisional approval is not a foregone conclusion.

3. In the same vein, a decision to disapprove an application for a plan of work under subparagraph (c) must be made in good faith and on the basis of non-compliance with the criteria in subparagraph (c), such as where there are inadequate environmental safeguards or issues with the efficient conduct of activities in the Area.

***Question (2). What is the procedure and what are the criteria to be applied in the consideration and provisional approval of a pending application under subparagraph (c), in the light of, amongst others, article 145 of UNCLOS? In this regard, what roles do the Council and the Legal and Technical Commission (LTC) respectively play?***

4. Article 2 of the Part XI Agreement provides that the relevant provisions of the Part XI Agreement and Part XI of UNCLOS "*shall be interpreted and applied together as a single instrument*". The legal provisions relevant and applicable to the procedure for approval of a plan of work for exploitation (including provisional approval) therefore include Articles 153 and 165(2)(b), and Annex III, Article 6, of UNCLOS, as well as paragraph 11 of section 3 of

the annex to the Part XI Agreement. According to the procedure provided for under UNCLOS and the Part XI Agreement, pending applications for provisional approval of a plan of work under subparagraph (c) are to be reviewed by the LTC, who shall then submit appropriate recommendations to the Council for consideration. In this regard, the LTC's expertise and recommendations, such as regarding the environmental implications of the said plan of work, would be beneficial to the Council's decision-making, particularly in the absence of fully elaborated and adopted RRPs relating to exploitation.

5. The criteria to be applied by the Council in the consideration and provisional approval of pending applications are explicitly listed in subparagraph (c), namely, "*the provisions of the Convention and any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and principles contained in this Annex as well as the principle of non-discrimination among contractors*". These include, but are not limited to, the provisions under Part XI of UNCLOS, including Article 145.

6. It is a possible option for the Council to provisionally adopt parts of the RRPs relating to exploitation even if it has yet to complete the elaboration of the RRPs in their entirety. If this is done, the Council must have regard to the provisionally adopted RRPs in its decision-making under subparagraph (c).

***Question (3). What are the consequences of the Council provisionally approving a plan of work under subparagraph (c)? Does provisional approval of a plan of work equate to the conclusion of an exploitation contract?***

7. The word "provisional" indicates that the Council's approval of the plan of work could potentially be subject to change. This envisages that the Council has the power under certain circumstances to vary its decision on approval or impose appropriate conditions, such as in the event of new facts and evidence, and/or to ensure compliance with UNCLOS, the Part XI Agreement or any subsequently adopted RRPs.

8. Given that provisional approval under subparagraph (c) means that approval has yet to be finalised, it must follow that there is also yet to be a concluded exploitation contract. In the event that a plan of work is provisionally approved under subparagraph (c), the Council must act in good faith regarding any next steps towards the conclusion of an exploitation contract, and on the basis of whether there are, for instance, facts or evidence which materially alters its assessment.