

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART II**

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

1. Name of Working Group:

Open Ended Working Group

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

Canada and Australia

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

DR Regulation 23 - Transfer of rights and obligations under an exploitation contract

4. 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 23

Transfer of rights and obligations under an exploitation contract

1. A Contractor may transfer its rights and obligations under an exploitation contract in whole or in part only with the prior consent of the Council, based on the recommendations of the Commission and with notification to the sponsoring State or States.
2. ~~An application for consent to transfer the rights and obligations under an exploitation contract shall be made to the Secretary-General jointly by the Contractor and transferee. The Contractor and transferee shall jointly inform the Secretary-General of any application to transfer the rights and obligations under an exploitation contract. The Secretary-General shall transmit that application to the Commission, which shall give its recommendation to the Council.~~
3. The Commission shall consider the application for consent to transfer at its next available meeting, provided that the documentation has been circulated at least 30 Days prior to that meeting.
4. ~~The Commission shall [consider whether] [ensure that] the transferee. In recommending approval of the transfer, the Commission shall ensure that the transferee :~~
 - a. Meets the requirements of a qualified applicant as set out in regulation 5;
 - b. Has submitted a certificate of sponsorship as set out in regulation 6;
 - c. Has submitted a form of application as set out in regulation 7 if the Secretary-General considers that there is a Material Change to the Plan of Work;

- d. Has paid all relevant fees and levies established by the Council~~the administrative fee as set out in appendix II;~~
 - e. Meets the criteria set out in regulation[s 12 (4) and] 13[(4)], and has provided Environmental Plans that comply with regulation 13 (4) (e); and
 - f. Has deposited an Environmental Performance Guarantee as set out in regulation 26.
 - f.g. Submit ownership information to the Beneficial Ownership Registry
5. The Commission shall not recommend approval of the transfer if it would:
 - a. Involve conferring on the transferee a Plan of Work, the approval of which would be forbidden by article 6 (3) (c) of annex III to the Convention; or
 - b. Permit the transferee to monopolize the conduct of activities in the Area with regard to the Resource category covered by the exploitation contract.
 6. Where the exploitation contract is subject to an encumbrance registered in the Seabed Mining Register, the Commission shall not recommend consent to ~~sanction~~ the transfer unless it has received evidence of consent to the transfer from the beneficiary of the encumbrance.
 7. Where the Commission determines that the requirements of paragraphs 4, 5 and 6 above have been fulfilled, it shall recommend approval of ~~confirm~~ the ~~application for consent~~ ~~transfer~~ to the Council. In accordance with article 20 of annex III to the Convention, the Council shall not ~~unreasonably~~ withhold ~~consent to a~~ ~~sanctioning of the~~ transfer if the requirements of this regulation are complied with. Once the Council received a recommendation from the Commission, the Council will inform the Contractor of the Commission's decision within 30 days
 8. A transfer is validly effected only upon:
 - a. Execution of the assignment and novation agreement between the Authority, the transferor and the transferee;
 - b. Payment of the prescribed transfer fee pursuant to appendix II; and
 - c. **[Recording by the Secretary-General of the transfer in the Seabed Mining Register.]**-
 9. The assignment and novation agreement shall be signed on behalf of the Authority by the Secretary-General or by a duly authorized representative, and on behalf of the transferor and the transferee by their duly authorized representatives.
 10. [The terms and conditions of the transferee's exploitation contract shall be those set out in the standard exploitation contract annexed to these Regulations that is in effect on the date that the Secretary-General or a duly authorized representative executes the assignment and novation agreement.]

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

On paragraph 4(d), changes are suggested so that wording is general enough to capture any asset transfer tax or profit share on the transfer of rights.

On paragraph 5, disclosure to the benefit sharing registry should be a requirement for the transfer of rights.

On paragraph 7, the Council should have a time bound period for informing a Contractor of a decision.

As an additional consideration, the term “monopolize” should be defined. For example, a transfer could be prohibited if it provides a transferee with over 75% of the value of production in the Area once at least two permitted areas have already entered production.

Furthermore, a tax on the transfer of rights at the ISA may need to be referenced in this regulation should that taxation mechanism materialize.