

**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 on the Financial Terms of Contracts

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 82

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 82

Review of rates of payments

1. In accordance with section 8 of annex to the Agreement, a first review of the rates of payments under an existing system of payments shall be initiated by the Council on the five year anniversary of the start of the first royalty period [i.e., January 1st or July 1st] corresponding to the first instance of commencement of Commercial Production in the Area.
2. A review of the rates of payments shall occur every six years [five years plus one year for the review and approval process] following the initiation date of the first review of the rates under paragraph 1.
3. A review of the rates of payments shall consider all Resource Categories unless otherwise decided by the Council.
- ~~1. The rates of payments under an existing system of payments shall be reviewed by the Council five years~~
 - ~~2. from the first date of commencement of Commercial Production in the Area and at intervals thereafter as determined by the Council [and every five years thereafter, applying to all contractors that have commenced Commercial Production, unless otherwise 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 and in consultation with Contractors, may shall, within 12 months following the date when each review is initiated, decide on whether to adjust the rates of payments and the magnitude of any adjustments.

5. Recommendations of the Commission to the Council under paragraph 4 shall:
 - a. reflect the objectives contained in Article 13, Annex III of the Convention, including to ensure optimum revenues for the Authority from the proceeds of Commercial Production;
 - b. follow the process and consider relevant matters as set out in the applicable Standard; and
 - c. be informed by consultations with relevant experts and stakeholders [including the Economic Planning Commission].~~adjust the rates of payments in the light of such recommendations and consultation taking into account the economic viability of the project~~
6. A change in the rates of payments:
 - a. shall take effect from the beginning of the first royalty period following the Council's decision under paragraph 4 [i.e., January 1st or July 1st];
 - b. shall apply to all future Contract Areas and all Contract Areas where the first five years of Commercial Production have been completed by the time that the change in rates of payments takes effect; and
7. A change in the rates of payments shall only apply by agreement between the Authority and the Contractor for Contract Areas where the following conditions are met:
 - a. the first five years of Commercial Production under the Contact Area have not been completed; and
 - b. the Contractor does not hold another Contractor Area of the same Resource Category which has already completed the first five years of Commercial Production.
8. Without limiting the scope of any review by the Council, a review under this regulation may include an adjustment to the Applicable Royalty Rate for any system of payments adopted under these regulations, including the manner and basis of their calculation and establishing rates of payments for new relevant metals or minerals that are likely to be commercially exploited during the next review cycle.
- ~~3. , save that any adjustment to the rates of payments may only apply to existing exploitation contracts~~
- ~~4. _ [from the end of the Second Period of Commercial Production reflected in appendix IV to these regulations] [after five years of commercial production have been completed under that exploitation contract].~~
- ~~5. 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].~~

5. Please indicate the rationale for the proposal.

The rate review mechanism may represent the only time that the ISA is able to require contractors to increase their rates of payment during the duration of their exploitation contract. A systematic, periodic review of the rates would help ensure that a royalty rate regime optimizes revenue to the Authority.

An accompanying Standard could provide detailed instructions for the review of rates of payment, including:

- The Council will establish a rate review schedule upon the commencement of Commercial Production in the Area.
- Based on the rate review schedule, the Council will ensure that adequate funds are allocated in the Authority's budget to undertake the review.
- The Council will task the Legal and Technical Commission (LTC) to prepare terms of reference for each rate review.
- The LTC will draft terms of reference for the review and Council approval at the relevant Council meeting according to the rate review schedule.
- The LTC will be responsible for:
 - Undertaking the review
 - Engaging third-party experts or panel of experts
 - Ensuring consultations with all stakeholders
 - Providing the Council with recommendations and supporting rationale within an established time limit [# months].
- During the rate review process, the LTC must formally consult relevant stakeholders including contractors, sponsoring states, the Enterprise, land-based mining countries, and the Economic Planning Commission (once established).
- Any proposed rate change must be material in nature and not an administrative nuisance (e.g., rate change of less than [#] percentage point should not be recommended).

The Council should consider whether, when the LTC is conducting a rates review, there should be a presumption under a relevant Standard that the rates would not change unless there is substantial evidence that the existing rates have been set too high or low.