



HOW TO APPLY FOR AN EXPLORATION CONTRACT FOR MINERAL RESOURCES IN THE AREA

1. Introduction

The International Seabed Authority (ISA) is the organization through which States Parties to the United Nations Convention on the Law of the Sea (UNCLOS) organize and control all mineral-resources-related activities in the seabed and ocean floor beyond the limits of national jurisdiction (the Area) for the benefit of humankind as a whole.

Under the 1994 Agreement relating to the implementation of Part XI of UNCLOS (1994 Agreement), between the entry into force of UNCLOS and the approval of the first plan of work for exploitation, ISA has to adopt a comprehensive set of rules, regulations and procedures to regulate prospecting, exploration and exploitation of marine minerals in the Area. All this constitutes what is generally referred to as the "Mining Code."

The present brief aims to address the increasing number of questions submitted on this matter and to illustrate the process prescribed under the exploration regulations for States Parties to UNCLOS, state enterprises and private entities sponsored by States Parties to apply for contracts for exploration for polymetallic nodules,¹ polymetallic sulphides² and cobalt-rich ferromanganese crusts.³

According to the regulations adopted by ISA, exploration includes the searching

for deposits of mineral resources in the Area with exclusive rights, the analysis of such deposits, the use and testing of recovery systems and equipment, processing facilities and transportation systems and the carrying out of studies of the environmental, technical, economic, commercial and other appropriate factors that must be taken into account in exploitation.

2. Who can apply to explore the mineral resources of the Area?

Under UNCLOS and the 1994 Agreement, States Parties, state enterprises or natural or juridical persons who possess the nationality of Members of ISA or are effectively controlled by them or their nationals, are allowed to apply to ISA for approval of a plan of work for exploration.

Applications shall be submitted to the ISA Secretary-General by a designated authority of a State or of the Enterprise or a designated representative of a natural or juridical person. Applications **submitted by natural or juridical persons shall also contain sufficient information to determine the nationality of the applicant or the identity of the State or States by which the applicant is effectively controlled** and their principal place of business or domicile.

¹ ISA. 2013. Decision of the Council of the International Seabed Authority relating to amendments to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area and related matters (ISBA/19/C/17). Available at: https://www.isa.org.jm/wp-content/uploads/2022/04/isba-19c-17_0-2.pdf.

² ISA. 2010. Decision of the Assembly of the International Seabed Authority relating to the regulations on prospecting and exploration for polymetallic sulphides in the Area (ISBA/16/A/12/Rev.1). Available at: https://www.isa.org.jm/wp-content/uploads/2022/04/isba-16a-12rev1_0.pdf.

³ ISA. 2012. Decision of the Assembly of the International Seabed Authority relating to the Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area (ISBA/18/A/11). Available at: https://www.isa.org.jm/wp-content/uploads/2022/04/isba-18a-11_0.pdf.

3. What information should be submitted to apply for the exploration of mineral resources in the Area?

Every application for a plan of work for exploration shall be accompanied by the following:

A. A certificate of sponsorship issued by the State of which the applicant is a national or by which or by whose nationals it is effectively controlled.

If the applicant has more than one nationality, each State involved shall issue a certificate of sponsorship. Where the applicant has the nationality of one State but is effectively controlled by another State or its nationals, each State involved shall issue a certificate of sponsorship.

The certificate of sponsorship shall contain

- a) the name of the applicant and of the sponsoring State
- b) a statement that the applicant is either a national of the sponsoring State or subject to the effective control of the sponsoring State or its nationals
- c) a statement by the sponsoring State that it sponsors the applicant
- d) the date of deposit by the sponsoring State of its instrument of ratification, accession or succession to UNCLOS and
- e) a declaration that the sponsoring State assumes the responsibility to ensure compliance and corresponding liabilities, in accordance with UNCLOS.

B. A statement by the State or the sponsoring State certifying that the applicant has the necessary

financial resources to meet the estimated costs of the proposed plan of work for exploration if an application is submitted by a State or a state enterprise.

Copies of its audited financial statements, including balance sheets and profit-and-loss statements, for the most recent three years, if the applicant is a natural or juridical person.

A newly organized entity can submit a pro forma balance sheet certified by an appropriate official of the applicant.

C. A general description of

- a) the applicant's previous experience, knowledge, skills, technical qualifications and expertise relevant to the proposed plan of work for exploration
- b) the equipment and methods expected to be used in carrying out the proposed plan of work and
- c) the applicant's capability to respond to any incident or activity which causes serious harm to the marine environment.

D. A written undertaking to ISA that the applicant will

- a) accept as enforceable and comply with the applicable obligations created by the provisions of UNCLOS and the ISA rules, regulations and procedures, the decisions of its organs, the terms of its contract with ISA
- b) accept control by ISA of activities in the Area
- c) provide ISA with a written assurance that its obligations under the contract will be fulfilled in good faith.

How to apply for a reserved area

In 2001, the ISA Secretariat commissioned Geostat Systems International (GSI) of Canada to carry out a resource estimation for the reserved areas based on the data submitted by contract applicants between 1987 and 1994. The study by GSI concluded that some 5,400 million tons of metal lay on the seabed in the reserved areas located in the Area.

In 2018, the Secretariat reviewed the resource assessment for the remaining reserved areas for polymetallic nodules, including available data on nodule abundance (kg/m²), contained manganese, nickel, cobalt, copper (%) and water depths (m). Quality checks were undertaken to ensure consistency of the data and the spatial accuracy. The resulting resource model represents an inventory of the seabed nodules that may become economically extractable in the future and could be used to delineate areas that offer greater potential and characterize areas of best economic potential.

Any State which is a developing State, or any natural or juridical person sponsored by it and effectively controlled by it can notify the ISA Secretariat that it wishes to submit a plan of work for exploration with respect to a reserved area.

Only after the conclusion of the exploration contract, can the available resource datasets, including nodule abundance, mineral grade percentage and weight of nodules be shared with the applicant, in accordance with the relevant UNCLOS provisions.

E. The identification of the boundaries of the area under application.

Applications for exploration for polymetallic nodules shall cover a total area sufficiently large and of sufficient estimated commercial value to allow two mining operations. The applicant shall attach a chart and a list of coordinates (in accordance with the World Geodetic System (WGS84)) dividing the area into two parts of equal estimated commercial value. The total area of each proposed mining operation shall not exceed 150,000 square kilometres.

The ISA Legal and Technical Commission (LTC) will then recommend which should be allocated to

the applicant and which should be kept as a reserved area for access by developing States.

When applying for exploration for polymetallic sulphides, the area covered by each application shall be comprised of not more than 100 polymetallic sulphide blocks, which shall be arranged by the applicant in at least five clusters.⁴ The total area shall not exceed 10,000 square kilometres.

For cobalt-rich ferromanganese crusts, the area covered by each application for approval of a plan of work for exploration for cobalt crusts shall be comprised of not more than 150 cobalt crust blocks.⁵ The total area

⁴ A "block" is a cell of a grid as provided by ISA, which shall be approximately 10 kilometres by 10 kilometres and no greater than 100 square kilometres (ISBA/16/A/12/Rev.1, Regulation 12).

⁵ A "cobalt crust block" is one or more cells of a grid as provided by ISA, which may be square or rectangular in shape and no greater than 20 square kilometres in size. Five contiguous cobalt crust blocks form a cluster of cobalt crust blocks. Two such blocks that touch at any point shall be considered to be contiguous. Clusters of cobalt crust blocks need not be contiguous but shall be proximate and located entirely within a geographical area measuring not more than 550 kilometres by 550 kilometres (ISBA/18/A/11, Regulation 12).

covered by an application shall not exceed 3,000 square kilometres.

Again, in the case of applications for polymetallic sulphides and cobalt-rich crusts, the applicant shall attach a chart and a list of coordinates using WGS84. Applicants can elect either to contribute a reserved area (in which case they must identify sufficient blocks to allow for two mining operations) or to offer an equity interest in a joint venture arrangement with the Enterprise.

In all cases, following the approval of the contract, portions of the area allocated shall be progressively relinquished and reverted to the Area in accordance with the relevant regulations.

F. A general description and a schedule of the proposed exploration programme, including the programme of activities for the immediate five-year period.

G. A description of the programme for oceanographic and environmental baseline studies to assess the potential environmental impact of the proposed exploration activity, including the impact on biodiversity. It is important to obtain sufficient information from the exploration area to document the natural conditions to gain insight into natural processes such as dispersion and settling of particles and benthic faunal succession, and to gather other data that should make it possible to acquire the capability necessary to make accurate environmental impact predictions. Guidance on the scope and content of baseline studies can

be found in the recommendations for the guidance of contractors issued by the LTC.⁶

H. A preliminary assessment of the possible impact of the proposed exploration activities on the marine environment. The LTC guidance includes a list of activities commonly undertaken during exploration which are considered to have no impact on the marine environment.

I. A description of proposed measures for the prevention, reduction and control of pollution and other hazards, as well as possible impacts to the marine environment.

J. A schedule of anticipated yearly expenditures in respect of the programme of activities for the immediate five-year period. The reporting of actual and direct exploration expenditure shall be conducted in line with the recommendations issued by the LTC.⁷

4. The processing and administrative fees

The fee for processing an application for approval of a plan of work for the exploration for polymetallic nodules and cobalt-rich crusts is fixed at USD500,000.

To process an application for a plan of work for exploration for polymetallic sulphides, the applicant can opt for: a) a fixed fee of USD500,000 or its equivalent in a freely convertible currency, b) a fixed fee of USD50,000 and an annual fee calculated in accordance with the regulations for the exploration of polymetallic sulphides.

⁶ ISA. 2023. Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area (ISBA/25/LTC/6/Rev3. Available at <https://www.isa.org.jm/wp-content/uploads/2023/08/2315256E.pdf>

⁷ ISA. 2015. Recommendations for the guidance of contractors for the reporting of actual and direct exploration expenditure (ISBA/21/LTC/11). Available at <https://www.isa.org.jm/wp-content/uploads/2022/04/isba-21lrc-11-EN-1.pdf>

Contractors are also required to pay an annual overhead charge of USD80,000 to cover the costs which ISA incurs for the administration and supervision of the contract.⁸

5. The evaluation and approval of an application for a plan of work for exploration

Role of the Secretary-General

Upon receipt of an application, the Secretary-General will acknowledge receipt in writing and notify Member States of the receipt of such application.

The Secretary-General will also notify the members of the LTC and place consideration of that application in the agenda for the following meeting of the LTC (provided that the application must have been circulated no later than 30 days prior to the opening of the meeting of the LTC).

Role of the LTC

The LTC is required to determine if the applicant possesses the financial and technical capability to carry out the proposed plan of work for exploration and has provided details on its ability to comply promptly with emergency orders and, generally, whether it has complied with the provisions of the applicable regulations.

The LTC also determines whether the proposed plan of work for exploration provides for the effective protection of human health and safety and the effective protection and preservation of the marine environment. If such requirements are met, the LTC recommends the approval of the plan of work for exploration to the Council.

If, on the contrary, the LTC finds that an application does not meet such requirements, the Secretary-General will notify the applicant in writing accordingly. The applicant may amend its application within 45 days of such notification. If the LTC, after further consideration, remains of the view that it should not recommend approval of the plan of work for exploration, it shall inform the applicant and provide the applicant with a further opportunity to make representations within 30 days of such information.

Role of the Council

The Council shall consider the reports and recommendations of the LTC relating to approval of plans of work for exploration in accordance with paragraphs 11 and 12 of section 3 of the annex to the 1994 Agreement.

6. The contract for exploration

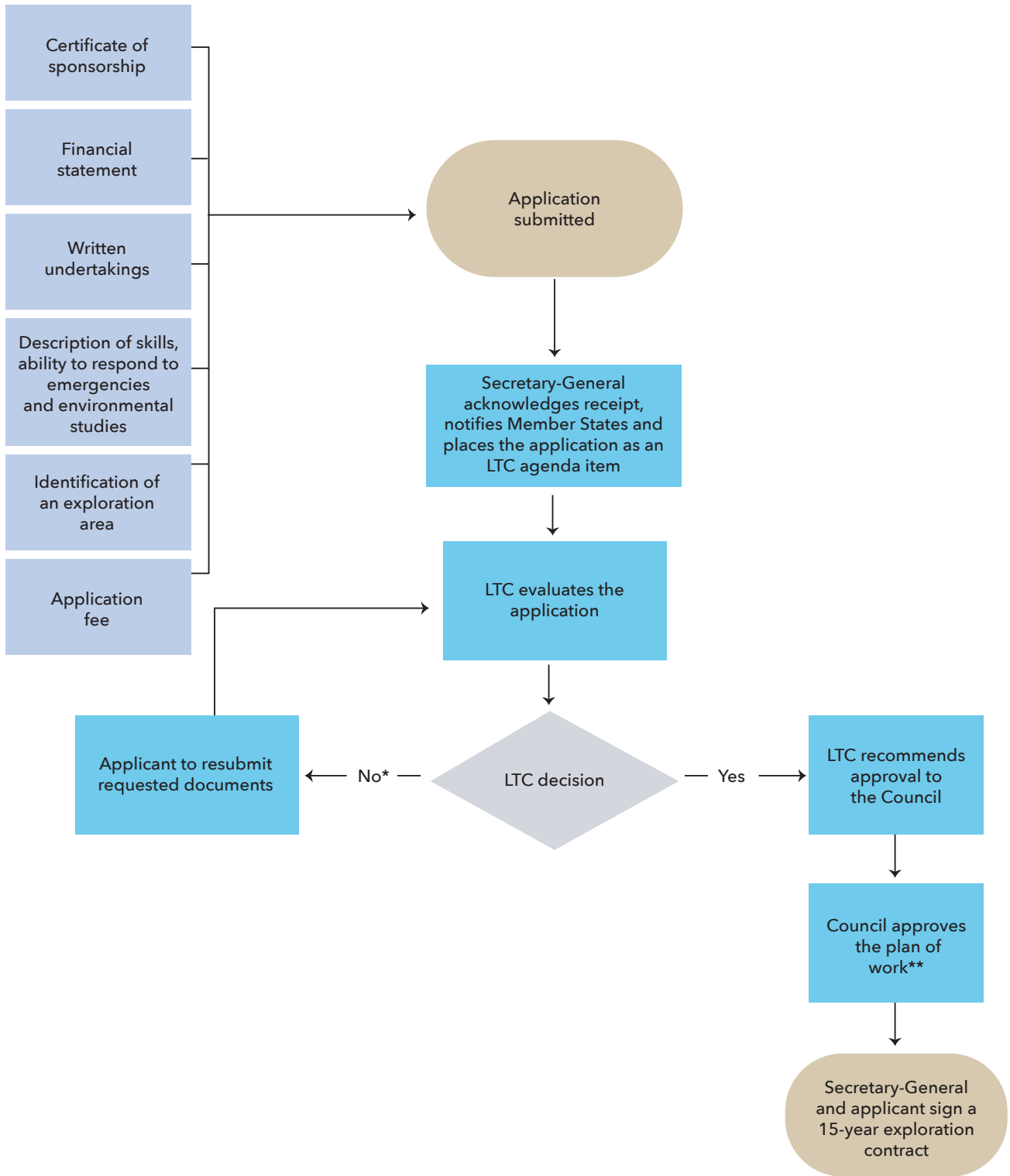
After the Council approves a plan of work for exploration, it shall be prepared as a contract between ISA and the applicant.

The contract is signed by the Secretary-General on behalf of ISA and by the applicant and is in force for a period of 15 years. It must also include as a schedule a practical programme for the training of personnel of ISA and developing States drawn up by the contractor in cooperation with ISA and the sponsoring State or States. The applicant should include in its application its proposed training programme during the first five years of the contract. The Secretary-General takes into account the recommendations of the LTC when discussing and negotiating training programmes with contractors.⁹

⁸ Section 10.5 of the standard clauses for exploration contracts (ISBA/26/C/28). Available at: https://www.isa.org.jm/wp-content/uploads/2022/06/ISBA_26_C_28-2103725E.pdf.

⁹ ISA. 2013. Recommendations for the guidance of contractors and sponsoring States relating to training programmes under plans of work for exploration (ISBA/19/LTC/14). Available at: https://www.isa.org.jm/wp-content/uploads/2022/04/isba-19ltc-14_0.pdf

Figure 1. Process of application for a plan of work for exploration for mineral resources in the Area



*In case the LTC decides not to recommend a plan of work, other procedures would apply in accordance with UNCLOS, the 1994 Agreement and the rules, regulations and procedures of ISA

** In case the Council does not approve a recommendation for approval of a plan of work from the LTC, other procedures would apply in accordance with UNCLOS, the 1994 Agreement and the rules, regulations and procedures of ISA.

Table 1. Relevant regulatory provisions for the application of a plan of work for exploration for mineral resources in the Area

	Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area	Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area	Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area
Who is entitled to apply	Regulation 9	Regulation 9	Regulation 9
Who shall submit an application?	Regulation 10	Regulation 10	Regulation 10
Certificate of sponsorship	Regulation 11	Regulation 11	Regulation 11
Financial and technical capabilities	Regulation 12	Regulation 13	Regulation 13
Undertakings	Regulation 14	Regulation 15	Regulation 15
Designation of a reserved area	Regulation 16	Regulation 17	Regulation 17
Information to be submitted for approval of the plan of work for exploration	Regulation 18	Regulation 20	Regulation 20
Offer of equity interest	-	Regulation 19	Regulation 19
Fee for application	Regulation 19	Regulation 21	Regulation 21
Receipt of application	Regulation 20	Regulation 22	Regulation 22
Consideration by LTC	Regulation 21	Regulation 23	Regulation 23
Contract of exploration	Regulation 23	Regulation 25	Regulation 25
Duration of contract	Regulation 26	Regulation 28	Regulation 28
Training	Regulation 27	Regulation 29	Regulation 29



ABOUT THE INTERNATIONAL SEABED AUTHORITY

Made up of 168 Member States, and the European Union, ISA is mandated under the UN Convention on the Law of the Sea to organize, regulate and control all mineral-related activities in the international seabed area for the benefit of humankind as a whole. In so doing, ISA has the duty to ensure the effective protection of the marine environment from harmful effects that may arise from deep seabed related activities.