

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29TH SESSION:
COUNCIL - PART I**

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:

Institutional Matters

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

Federal Republic of Germany

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

DR 13

Red text is in original draft; **blue text** indicates Germany's textual proposals

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 13.ALT

Assessment of applicants and applications

1. In assessing both the applicant and the application, the Commission shall take into account all information pursuant to Regulation 12(4) and all applicable Standards and Guidelines when making its determinations under this Regulation.
2. The Commission shall determine whether the **applicant** meets the following criteria:
 - a. The applicant is a qualified applicant pursuant to regulation 5;
 - b. The applicant has given the undertakings and assurances specified in regulation 7(2);
 - c. The applicant and, if applicable its parent company, legal predecessor, senior management and controlling shareholders, have satisfactorily discharged their obligations to the Authority, including having a satisfactory record of past performance both within the Area and in other jurisdictions;
 - d. The applicant has demonstrated that it will meet the requirements in regulation 18bis.1.quin;
 - e. The applicant has the financial and technical capabilities and capacity to carry out the Plan of Work, meet or exceed environmental performance obligations and to meet all obligations under an exploitation contract, pursuant to the relevant Standard, in accordance with paragraphs 3 and 4 of this regulation; and

- f. The applicant is under the effective control of the sponsoring State in accordance with paragraph 5 of this regulation.
3. In considering the **financial capability** of an applicant, the Commission shall determine, in accordance with Standards and taking into account Guidelines, whether:
 - a. The Financing Plan is compatible with proposed Exploitation activities;
 - b. The applicant is capable of committing [or raising] sufficient financial resources to cover the estimated costs of the proposed Exploitation activities as set out in the proposed Plan of Work, and all other associated costs of complying with the terms of any exploitation contract, including:
 - i. The payment of any applicable fees and other financial payments and charges in accordance with these regulations in order to ensure that the project will benefit humankind as a whole;
 - ii. The estimated costs of implementing the Environmental Management and Monitoring Plan and the Closure Plan; and
 - iii. Sufficient financial resources for the prompt execution and implementation of the Emergency Response and Contingency Plan, and effective response to an Incident;
 - c. The applicant demonstrates that it will purchase insurance products that are appropriate to the financing of exposure to risk in accordance with Regulation 36, and applicable Standards, taking into account Guidelines;
 - d. The applicant has proposed an Environmental Performance Guarantee whose amount and form is assessed by the Commission to be adequate, and in conformity with the requirements of Regulation 26 and the relevant Standard, and taking into account any Finance Committee report or Guidelines.
4. In considering the **technical capability** of an applicant, the Commission shall determine, in accordance with Standards and taking into account Guidelines, whether the applicant has provided sufficient information to demonstrate it has:
 - a. Certification to operate under internationally recognised quality control and management standards;
 - b. The necessary technical and operational capability to carry out the proposed Plan of Work in accordance with Good Industry Practice and Best Environmental Practices using appropriately qualified and adequately supervised personnel;
 - c. The technology, knowledge, and procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan and the Closure Plan, and the applicable Regional Environmental Management Plan, including the technical capability to identify and monitor key environmental parameters and ecosystem components so as to detect any adverse effects, and to modify management and operating procedures as required to meet all environmental requirements;
 - d. Established the necessary risk assessment and risk management systems to effectively implement the proposed Plan of Work in accordance with Good Industry Practice, Best Available Techniques, Best Available Scientific Information, and Best

Environmental Practices, and these regulations, including the technology and procedures to meet health, safety and environmental requirements for the activities proposed in the Plan of Work;

- e. The capability to respond effectively and promptly to Incidents, in accordance with the Emergency Response and Contingency Plan;
 - f. The capability and capacity to utilize and apply Best Available Techniques;
 - g. A safety management system that meets the requirements of regulation 30 bis; and
 - h. An Environmental Management System that meets the requirements of Regulation 46.
5. In considering whether the applicant is under the **effective control** of the sponsoring State, the Commission shall determine:
- a. [insert wording based on outcome of intersessional work];
 - b. Whether the sponsoring State has enacted domestic legislation covering activities in the Area that:
 - i. is in force and applicable;
 - ii. provides available recourse through the domestic legal system in accordance with Article 235(2) of the Convention; and
 - iii. does not contain provisions that exempt liability of the sponsored entity from a cause of action that may result from its conduct of activities in the Area.
6. The Commission shall determine whether **the application** meets the following criteria:
- a. The application is accompanied by a certificate of sponsorship;
 - b. The application is in conformity with these regulations, the applicable Standards, the relevant Regional Environmental Management Plan and takes into account [the applicable] Guidelines;
 - c. The application provides for benefits for humankind, reasonable regard for other activities, effective protection of the Marine Environment, and protection of cultural rights or interests, in accordance with paragraphs 7 to 10 of this regulation.
7. In considering whether an application provides for **benefits for humankind** as a whole, the Commission shall determine:
- a. Whether the Plan of Work will provide optimum revenue to the Authority, and taking into account negative externalities caused by any damage to the Marine Environment, will benefit humankind as a whole;
 - b. Whether the Plan of Work is consistent with the fundamental policies and principles contained in regulation 2;
 - c. Whether the Plan of Work provides for the effective protection of human life, and health and safety of individuals engaged in Exploitation, in accordance with the rules, regulations and procedures adopted by the Authority [and by any other competent international organizations].

8. In considering whether an application provides for **reasonable regard for other activities** in the Marine Environment, the Commission shall determine:
 - a. Whether the Plan of Work provides for Exploitation to be carried out in line with regulation 31 and article 87 and 147 of the Convention, and in accordance with the relevant Standards and taking account of Guidelines;
 - b. Whether the Plan of Work has demonstrated due diligence in relation to the accommodation of other activities in the Marine Environment, including to:
 - i. identify in-service and planned submarine cables and pipelines in, or adjacent to, the area under application using the publicly-available data and resources taking into account the Guidelines;
 - ii. identify sea lanes in, or adjacent to, the area under application that are essential to international navigation;
 - iii. identify areas of intense fishing activity as may be defined in Standards or Guidelines in, above, or adjacent to, the area under application;
 - iv. identify any other activities in or adjacent to the Contract Area in accordance with Regulation 31, including marine scientific research activities, activities relating to marine genetic resources, and environmental protection measures and area-based management tools established or proposed by competent international organizations; and
 - v. where other marine users are identified in relation to the area under application whether listed in the Regional Environmental Management Plan or identified by some other means, consult with those users to agree measures the Contractor will take to give reasonable regard to their activities pursuant to Regulation 31.
9. In considering whether an application provides for **effective protection of the Marine Environment**, the Commission shall determine:
 - a. Whether the Plan of Work demonstrates that it will meet the Authority's Strategic Environmental Goals and Objectives under Regulation 44ter, the regional environmental objectives and measures under the relevant Regional Environmental Management Plan, and the environmental thresholds in the relevant Standards, taking into account the cumulative effects of all relevant activities and climate change;
 - b. Whether the Plan of Work, complies with the principles set out in regulation 44(1);
 - c. Whether the Plan of Work demonstrates that:
 - i. it is based on adequate environmental baseline data, in accordance with applicable Standards and taking into account relevant Guidelines;
 - ii. it complies with the Standards developed pursuant to regulation 45;
 - iii. the Plan of Work gives full effect to the precautionary principle or approach as appropriate;

- iv. it will not cause Environmental Impacts outside of the relevant Contract Area and will not cause Environmental Impacts to any area designated by the Authority [or other relevant authority] as a protected area in terms that prohibit such impact;
 - v. it includes Preservation References Zones and Impact Reference Zones in accordance with the criteria contained in Annex Xter;
 - vi. performance of the Plan of Work can be effectively monitored and controlled by the Authority, to minimise Environmental Effects, and ensure compliance with the Rules of the Authority;
 - vii. identifies and manages appropriately the certainties, uncertainties or inadequacies in the data or information available at the time of application; and
 - viii. meets equivalent standards to relevant international rules with regards to any deliberate disposal of vessels, platforms or other man-made structures at sea.
- d. Whether the Plan of Work ensure effective protection of the Marine Environment, in accordance with all applicable environmental requirements in the Convention, Agreement, and the Rules of the Authority, taking into account:
- i. Any Environmental Effects or impact on other activities of allowing the Exploitation activity;
 - ii. All proposed Mitigation and risk management measures;
 - iii. An evaluation of harmful effects individually, in combination, as well as cumulatively, including effects from other activities in the area under application;
 - iv. The effects on human health that may arise from Environmental Effects;
 - v. The importance of protecting the biological diversity and integrity of marine species, ecosystems and processes;
 - vi. The importance of protecting rare and vulnerable ecosystems and the habitats of threatened species;
 - vii. Traditional knowledge or cultural interests relevant to the protection of the Marine Environment;
 - viii. The matters set out at Regulation 47(3)(b);
 - ix. The assessment framework for Mining Discharges as set out in the Guidelines; and
 - x. Any relevant Standards and Guidelines developed in accordance with regulations 94 and 95.
10. In determining whether an application provides for the protection of **cultural rights or interests**, the Commission shall:
- a. Determine whether the application adequately identifies such cultural rights or interests;
 - b. Demonstrates that the Plan of Work will not interfere with any cultural rights or interests; and
 - c. [adjust text based on the outcome of the intersessional WG on this topic].

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

- DR 13 currently regulates the assessment of the applicant and of the application. For example, questions around financial capability or past performance will assess the applicant, whereas questions around the environmental impact of the proposed mining operations or the potential benefits for humankind will assess the application, rather than the applicant. Germany proposes for these categories to be clearly distinguished. We propose a new, streamlined structure in the form of DR 13.ALT to reflect this distinction between assessing the applicant and the application and to implement a clearer structure for DR13 overall whereby each category of considerations has its own paragraph. We kindly request for 13.ALT to be reflected in the draft regulations. We have incorporated the content of DR13 into the new structure of 13.ALT, as follows:
 - Para 1: General considerations
 - Para 2: Assessment of the applicant
 - Para 3: Details for the assessment of financial capability
 - Para 4: Details for the assessment of technical capability
 - Para 5: Details for the assessment of effective control
 - Para 6: Assessment of the application
 - Para 7: Details for the assessment of benefits for humankind
 - Para 8: Details for the assessment of reasonable regard for other activities
 - Para 9: Details for the assessment of environmental protection
 - Para 10: Details for the assessment of cultural interests
- To increase efficiency, the LTC may wish to first assess the applicant and only once it has determined that the applicant meets all criteria, to proceed to assessing the full application on its merits. This may save time and resources for all parties involved. Indeed, Art 6(2) of Annex III of the Convention states: *'When considering an application for approval of a plan of work in the form of a contract, the Authority shall first ascertain whether: (a) the applicant has complied with the procedures established for applications in accordance with article 4 of this Annex ...; (b) the applicant possesses the requisite qualifications provided for in article 4 of this Annex.'* (emphasis added).
- Germany also proposes for the Authority's Strategic Environmental Goals and Objectives to be moved from DR 13 into a standalone DR 44ter, which can be cross-referenced in DR13. This shortens DR13. DR13.ALT reflects this change.