

**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:

President's Text

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 23

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 23 [OEWG]

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 **written** consent of the **[Sponsoring State], and the** Council **[,(such consent not to be unreasonably withheld)]**, based on the recommendations of the Commission **[and with notification to the Sponsoring State].**

2. 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 and decide whether to recommend to the Council to consent to 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. [Before the Commission can make a recommendation to the Council for approval of a transfer] The Commission shall verify 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, including the administrative fee as set out in appendix II;
- d bis. ~~Accepts to be bound by the Plan of Work and the Environmental Plans, applicable at the time of transfer;~~
- ~~6.ter. Has provided written assurances of the Transferee's holding, subsidiaries, affiliated and ultimate parent companies, agencies and partnerships, as applicable, accepting responsibility as set out in regulation 18bis.]~~
- e. Meets the criteria set out in regulations 12 and 13(4); [and]
- f. Has deposited an Environmental Performance Guarantee as set out in regulation 26; and][.]
- g. ~~has submitted ownership information to the Beneficial Ownership Registry.~~

4 ALT: An application to transfer the rights and obligations under an exploitation contract shall be subject to the requirements under regulations 5 to 16.

4. Bis. If at the time of the transfer a Material Change arises this should be addressed in accordance with Regulation 57.

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. Allow the transferee to monopolize the conduct of activities in the Area [with regard to the Resource category covered by the exploitation contract or the transferee would monopolize or significantly control the production of any single mineral or metal produced globally; or]
- c. If any circumstances under regulations 15(2) or (3) are applicable.

6. Where the exploitation contract is subject to an encumbrance registered in the Seabed Mining Register, the Commission shall not recommend consent to the transfer unless it has received evidence of consent to the transfer from the beneficiary of the encumbrance.

6bis. A Contractor shall pay a Transfer Profit Share, which shall be levied on a pro rata basis by the Authority on gains made from the direct or indirect transfer of rights under an exploitation contract.]

6.ter. The Authority shall publish a Standard for the effective operation of the Transfer Profit Share.]

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

- Germany suggests that transferring rights and obligations should only be permissible subject to the requirements under regulations 5-16. We therefore prefer Paragraph 4ALT, suggesting a streamlined approach by including a simple reference to regulations 5-16.
- If a Contractor is unable or unwilling to carry out the consented activities under an exploitation contract, the contractor should cease, and other applicants may apply for exploration or exploitation rights over the area in question. Leaving it up to the Contractor to select a successor excludes other potential candidates, notably the Enterprise, which is particularly problematic in light of the common heritage status of the Area.

Similarly, it may be argued that making a profit from selling an exploitation contract is not in the interest of humankind at large. At the very least, any such transfer should be taxed to ensure the Authority receives a share of profits made, as it is common in domestic law. Such taxation would contribute to ensuring that seabed mining would not receive a competitive advantage for terrestrial mining.

- We therefore welcome the suggestion from the African Group and Canada in Paragraphs 6bis and 6term, to tax transfers via a Transfer Profit Share to ensure maximum return to the CHM.
- We have also noted a proposal that every transfer should involve a new application, not only when there is a Material Change. We would welcome discussion on this proposal
- Additionally, we suggest further discussion is needed on the role of the sponsoring state during a transfer of rights, should such a transfer be permissible.