

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 30TH SESSION:
COUNCIL**

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 Consolidated Text

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

Canada

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

DR 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.**

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 [within 90 Days of the date it receives the application] [at its next available meeting, provided that the documentation has been circulated at least 30 Days prior to that meeting].
- [4. An application to transfer the rights and obligations under ~~an Exploitation~~ Contract shall be subject to the requirements under Regulations 5-16].
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.

~~[6. bis A Contractor shall pay~~The Authority shall levy a Transfer Profit Share, which shall be levied on a pro-rata basis by the Authority on gains any gain made realized from the direct or indirect transfer of rights under an ~~Exploitation~~ Contract.]

~~[6. ter The Authority shall publish a Standard for the~~The effective operation of the Transfer Profit Share referenced in the above paragraph shall follow the provisions included in the applicable Standard.]

7. Where the Commission determines that the requirements of paragraphs 4, 5, ~~and 6 [and 7 of this Regulation]~~ above have been fulfilled, it shall recommend approval of the application for consent to the Council. In accordance with Article 20 of Annex III to the Convention, the Council shall not withhold consent to a transfer if the requirements of this Regulation are complied with. Once the Council has received a recommendation from the Commission, the Council ~~will~~ shall inform the Contractor of the Council'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 ~~T~~ransferor 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.

~~[(d) Payment of the Transfer Profit Share in accordance with paragraph ~~7~~6 bis of this Regulation and the applicable Standard.]~~

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.]~~

~~11. The Exploration Regulations on Transfer of Rights and Obligations are hereby amended as set out in the provisions of this Regulation and all~~

applicable Standards and relevant Guidelines.

11. These amendments supersede and replace the relevant Exploration Regulations on Transfer of Rights and Obligations. In the event of any inconsistency between the two sets of Regulations and applicable Standards, the Exploitation Regulations above shall prevail.

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

This submission proposes amending several provisions of DR 23, as well as adding two new paragraphs. All amendments in track changes over the latest President's Consolidated text are highlighted in yellow for ease of reference.

Two new paragraphs have been added to this regulation effectively amending the exploration regulations that currently cover the transfer or rights and obligations under contract. This approach is akin to that taken for the 1994 Implementation Agreement which resulted in amendments to various articles under PART XI of the 1982 UN Convention on the Law of the Sea. However, the aim in this case is to ensure that the same set of rules and standards applies to any transfer of rights, whether they are under an exploration or exploitation contract. This is particularly relevant for the implementation of a transfer profit share where it is possible that significant profits might be generated from speculative transfers of exploration rights, especially during the early stages of commercial production in the Area. If the transfer of exploration rights is not subject to an obligation to pay a transfer profit share, the Authority would not receive any benefit from such profits tied to the common heritage of humankind. Rather than opening up the exploration regulations, we argue for the cleaner approach of amending them through the exploitation regulations, which are subject to ongoing negotiations.

With a view to making the rest of the provisions consistent with the additions of these two paragraphs, we also propose to remove the term 'Exploitation' as a qualifier to the term 'Contract'.

Finally, we have modified paragraph 6bis to underline that the obligation falls on the Authority to levy the Transfer Profit Share. The applicable Standard proposed during Part I of the 29th Session of the Council in March 2024 sets out that the Transfer Profit Share is to be paid by the Transferee. Given that a draft Standard has already been developed and presented to the Council for its consideration, paragraph 6ter has been revised to reflect that a Standard will be assumed to have been developed and agreed to ahead of the adoption of the exploitation regulations.