

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 30TH 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(s) of Delegation(s) making the proposal:** Australia
- 2. Please indicate the relevant provision to which the textual proposal refers.**

DR29bis – Procedure for suspensions in Exploitation activities

- 3. 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.**

Note: Proposed changes are in green.

...

~~2. Where a suspension of Exploitation activities is required for any reason by the Authority, the Authority will provide the Contractor with a suspension notice to specify what operations under the Plan of Work must cease, and which, if any, may continue, and any other relevant terms and conditions for the suspension.~~

- 3. During a suspension of Exploitation activities ~~for any reason~~:**

(a) A Contractor shall notify the Secretary-General as soon as it intends to recommence any or all of the suspended activities no later than [72 hours] before such recommencement, and, where necessary, shall provide to the Secretary-General such information as is necessary to demonstrate that the issue triggering a suspension has been addressed; or

(b) A Contractor shall report to the Secretary-General on at least a monthly basis with regards to the reasons for continuing the suspension, providing such information as is necessary to justify that the issue triggering a suspension continues.

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

Australia proposes deleting paragraph (2) on the basis that there should be a distinction between suspensions initiated by a Contractor and suspensions initiated by the Authority. DR29bis, together with the preceding DR29, appear to be intended to address circumstances of the former – for example, by permitting the Contractor to recommence activities in paragraph 3(a) – and therefore paragraph (2) is not required. In contrast, DR18ter (in part) and DR103 are intended to address suspensions initiated by the Authority. Australia notes that consensus is yet to be reached on the scope and purpose of the suspension provisions, and DR29bis should be further reviewed once the Council has decided on the Inspection, Compliance and Enforcement Mechanism, and completed its review of Part XI of the Revised Consolidated Text.

Australia also proposes deleting ‘for any reason’ in the chapeau of paragraph (3) because the corresponding wording in paragraph 2 has been proposed for deletion, and the words ‘for any reason’ are unnecessary.

Regulation 18 ter.

Termination of an Exploitation Contract

1. An Exploitation Contract can only be terminated:

(a) By the mutual consent of the parties;

(b) By reason of termination of State sponsorship, pursuant to Regulation 21 and without the Contractor having secured an alternative sponsorship;

(c) By the Contractor in accordance with the terms of the contract, as covered by section 10 of the Annex X to these Regulations;

(d) By the Authority in accordance with the terms of the contract, as covered by section 12 of the Annex X to these Regulations; [or]

2. Any suspension or termination of a contract by the Authority shall be by written notice to the Contractor, through the Secretary-General, which shall include a statement of the reasons for taking such action. The suspension or termination shall be effective 60 Days after such written notice, unless the Contractor within such period disputes the Authority's right to suspend or terminate the contract in accordance with Part XI, Section 5, of the Convention, in which case the contract shall only be suspended or terminated in accordance with a final binding decision in accordance with Part XI, Section 5, of the Convention.

Comments

- Different views appear on the reference to suspension in draft regulation 18 ter. Either the draft regulation should be updated to fully include suspension, including updating the title and cross reference to draft regulation 29 bis. and align with this draft regulation. Alternatively, and proposed by a delegation, all references to suspension should be removed from draft regulation 18 ter. to create clarity and underline that the draft regulation is limited to instances of termination. The processes for suspension are already dealt with under draft regulation 29 bis. This should be discussed and settled.
- Some delegations have suggested to retain paragraph 1(e). It has been retained in square brackets.
- Several delegations have raised concern that the 60 Days notice period does not align with particular circumstances in which suspension or termination are envisaged under the Regulations. Consequently, the phrase "*Unless a different time period is indicated in these Regulations*" have been proposed inserted to accommodate for any concerns.
- Paragraph 3 is a proposal received from a Regional Group during the first part of the twenty-ninth session, which gained support from several delegations.

Regulation 29

Reduction or suspension in production

1. Notwithstanding Regulation 28, a Contractor may temporarily reduce or suspend production [but shall notify the Secretary-General thereof [and

provide the rationale for such a reduction or suspension] [as soon as practicable thereafter]. Such reduction or suspension may be for a period of up to 12 months.

2. If the Contractor proposes to continue the reduction or suspension for more than 12 months, the Contractor shall notify the Secretary-General in writing, at least 30 Days prior to the end of the 12-month period, giving its reasons for seeking a further reduction or suspension of that length of time.

Comments

- Several delegations supported the suggested deletions in paragraph 2 and paragraphs 3-4 in their entirety. The text has been placed in the Revised Suspense Document in order for it to feed into relevant Annexes, Standard and Guidelines.
- It has been suggested by a delegation to insert a specific time period in paragraph 1 for the notification to be given.

Regulation 29 bis

Procedure for suspensions in Exploitation activities

1. Any time that there is a suspension of Exploitation activities under these Regulations, the Secretary-General shall notify the Council and publish notice at the Authority's website when activities have been suspended, which shall include the rationale for the suspension, and when the activities have recommenced.
2. Where a suspension of Exploitation activities is required for any reason by the Authority, the Authority will provide the Contractor with a suspension notice to specify what operations under the Plan of Work must cease, and which, if any, may continue, and any other relevant terms and conditions for the suspension.
3. During a suspension of Exploitation activities for any reason:
 - (a) A Contractor shall notify the Secretary-General as soon as it intends to recommence any or all of the suspended activities no later than [72 hours] before such recommencement, and, where necessary, shall provide to the Secretary-General such information as is necessary to demonstrate that the issue triggering a suspension has been addressed; or
 - (b) A Contractor shall report to the Secretary-General on at least a monthly basis with regards to the reasons for continuing the suspension, providing such information as is necessary to justify that the issue triggering a suspension continues.
4. The Secretary-General shall supply all information received pursuant to paragraph 3 to the Commission for review and to make a recommendation to the Council. The Council shall determine when the relevant Exploitation activities should recommence, giving the Contractor no less than 60 Days' written notice where resumption of activities is required.
5. In making its review under paragraph 4, the Commission shall take into account the recommendations of the Economic Planning Commission where applicable, and shall examine whether the reasons for the

suspension are reasonable, and whether a continued suspension or a recommencement of activities, would be in the best interests of humankind in the circumstances.

6. Throughout the duration of any suspension in Exploitation activities, the Contractor shall continue to monitor and manage the Mining Area in accordance with the relevant section of the Closure Plan.

7. Where a suspension in Exploitation activities continues for a period of more than 12 months, the Commission may require the Contractor to submit a Final Closure Plan in accordance with Regulation 60.

8. Where the Council requires recommencement of Exploitation activities after a suspension under this Regulation, and the Contractor does not comply with that requirement, this shall be treated as a serious violation of a fundamental term of the contract and these Regulations, and the Authority shall take appropriate compliance action.

9. In the event that a Contractor elects to suspend all Commercial Production for more than five consecutive years, the Council may after discussion with the Contractor decide that Commercial Production has ceased, and require the Contractor to implement the Final Closure Plan.

Comments

- Many delegations and observers supported the insertion of draft regulation 29 bis. It was suggested to add a paragraph 10 that would address reduction.
- It has been suggested by one delegation that draft regulation 29 bis. could be divided into two separate regulations, distinguishing between reductions due to the Authority's request contra reduction due to the Contractors decision.

Regulation 103

Compliance notice, suspension, and termination of Exploitation Contract

1. At any time, if it appears to the Compliance Committee based on reasonable grounds, including a report from an Inspector, or failure to comply with a written instruction under Regulation 99, that a Contractor is in breach of, the terms and conditions of its Exploitation Contract, provisions of the Convention related to activities in the Area, the Agreement or the rules, regulations and procedures of the Authority, the Compliance Committee shall issue a compliance notice to the Contractor requiring such action [necessary to remedy the breach] as may be specified in the compliance notice and shall report immediately to the Council on the issue of such notice.[The Compliance Committee shall, through the Secretary-General provide a copy of the compliance notice to the Sponsoring State or States].

2. A compliance notice shall:

- (a) Describe the breach and the factual basis for it; and

(b) Require the Contractor to take remedial or corrective action or other such steps as the Compliance Committee considers appropriate to ensure compliance within a specified time period and may include:

(i) the implementation of an improvement plan setting out actions to be taken to return to compliance, how the actions' effectiveness will be monitored and reported, the time permitted for action, and subsequent steps should the actions be unsuccessful, or should non-compliance continue; or

(ii) agreeing with the Contractor a modification to the Plan of Work in accordance with Regulation 57.

2. bis Actions specified in the compliance notice should be commensurate with the gravity, frequency or other circumstances of the breach.

3. For the purposes of Article 18 of Annex III to the Convention, a compliance notice issued under this Regulation constitutes a warning by the Authority.

4. The Contractor shall be given a reasonable opportunity not exceeding 30 Days to make representations in writing to the Secretary General concerning any aspect of the compliance notice, who shall transmit same to the Compliance Committee. Having considered any such representations and taking account of any enforcement action taken or to be taken by the Sponsoring State or States, the Compliance Committee may make recommendations to the Council to confirm, modify or withdraw the compliance notice.

5. If a Contractor, in spite of one or more warnings by the Authority, fails to implement the measures set out in a compliance notice and has conducted its activities in such a way as to result in [serious, persistent and wilful] violations of the fundamental terms of the Exploitation Contract, provisions of Part XI of the Convention, the Agreement or the rules, regulations and procedures of the Authority, the Council [may] suspend or terminate the Exploitation Contract by providing written notice of suspension or termination to the Contractor in accordance with the terms of the Exploitation Contract.

[5. Alt. The Secretary-General shall, [subject to the confidentiality requirements of Regulation 90] make public any compliance notice issued to a Contractor, any response received from the Contractor or Sponsoring State or States. The Compliance Committee shall include in their annual report to the Council a summary of any compliance notices issued.]

6. In the case of any violation of an Exploitation Contract not covered by paragraph 5 above, or in lieu of suspension or termination under paragraph 5 above, the Council may impose upon a Contractor monetary penalties proportionate to the seriousness of the violation which must be in line with indicative penalties set out in the applicable Standards, and which will include any administrative costs incurred by the Authority as a result of the violation.

7. Except for emergency orders under Article 162(2)(w) of the Convention, the Council may not execute a decision involving monetary penalties, suspension or termination until the Contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to it pursuant to section 5 of Part XI to the Convention.

7. bis The Council shall invite the attention of the Assembly to cases of non-compliance in accordance with Article 162(2)(a) of the Convention.