

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART III**

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:

Open Ended Working Group on the Financial Terms of Contracts

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

Australia and Canada

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

DR 82

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 82 Review of rates of payments

1. The rates of payments under an existing system of payments shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter in accordance with relevant Standards~~as determined by the Council, taking into account the Resource category and the level of maturity and development of Exploitation activities in the Area.~~
2. The Council, based on the recommendations of the Commission ~~and in consultation with Contractors,~~ may decide to adjust the rates of payments, ~~in the light of such recommendations and consultation, save that any adjustment to the rates of payments may only apply to existing exploitation contracts from the end of the Second Period of Commercial Production reflected in appendix IV to these regulations~~ taking into account the level of maturity and development of Exploitation activities in the Area.
3. A review of the rates of payments shall consider all Resource Categories unless otherwise decided by the Council.
4. An adjustment to the rates of payments shall only apply by agreement between the Authority and the Contractor for Contract Areas where each of the following conditions are met:
 - a. the first five years of Commercial Production under the Contract Area have elapsed; and

- b. the Contractor does not hold rights to another Contract Area of the same Resource Category for which the first five years of Commercial Production has elapsed.

2.5. Without limiting the scope of any review by the Council, a review under this regulation may include an adjustment to the ~~Applicable Royalty Rate under appendix IV and the manner and basis of the calculation of a royalty rate~~ associated with any payment mechanism adopted under the Rules Regulations and Procedures, including the manner and basis of their calculation, as well as the establishment of rates of payments for new relevant metals or minerals that are likely to be commercially exploited during the next review cycle.

5. Please indicate the rationale for the proposal.

The rate review mechanism may represent the only time that the ISA is able to require contractors to increase their rates of payment during the duration of their exploitation contract. A systematic, periodic review of the rates would help ensure that the financial mechanisms meet the needs and objectives of the Authority.

Specific elements to be included in the review process, including timelines, processes, and methodologies are proposed for inclusion in Standards will ensure greater transparency and predictability of the process from initiation to completion.

Finally, in addition to being aligned with the review of the system of payments, any review under this regulation and relevant Standards should apply to all rates under the various financial mechanisms established by the Authority (e.g., potential additional tax, profit share mechanism, financial incentives, etc.). A draft Standard for the rate review methodology is included under appendix II to this submission. The review principles and process proposed for the Standard, appended to the textual proposal for DR 81, are also applicable to the textual proposal for DR 82. Accordingly, this Standard is appended to this submission as Appendix I.

Draft Text for Relevant Standards

Review of the system of payments and the rates of payments (Regulation 81 and 82)

Introduction and Guiding Principles

1. The purpose of the review of the system of payments and the rates of payments is to ensure that the financial needs and objectives of the Authority are being fulfilled. The review process shall be governed by the provisions of the Convention, the Agreement, relevant international standards, and Good Industry Practice in extractives sector taxation. Specifically, Section 8 of the Annex to the Agreement sets out the following principles:

- a. 'The system of payments to the Authority shall be fair both to the contractor and to the Authority and shall provide adequate means of determining compliance by the contractor with such system;¹
- b. 'The rates of payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage;²
- c. 'The system should not be complicated and should not impose major administrative costs on the Authority or on a contractor. Consideration should be given to the adoption of a royalty system or a combination of a royalty and profit-sharing system. If alternative systems are decided upon, the contractor has the right to choose the system applicable to its contract. Any subsequent change in choice between alternative systems, however, shall be made by agreement between the Authority and the contractor;³

Additionally, Article 13 of Annex III to the Convention sets out the following guiding objectives for the Authority:

- a. 'to ensure optimum revenues for the Authority from the proceeds of commercial production,⁴
- b. 'to attract investments and technology to the exploration and exploitation of the Area,⁵ and
- c. to ensure equality of financial treatment and comparable financial obligations for contractors'.⁶

¹ Paragraph 1(a), Section 8 of the Annex to the Implementation Agreement

² Paragraph 1(b), Section 8 of the Annex to the Implementation Agreement

³ Paragraphs 1(c), Section 8 of the Annex to the Implementation Agreement

⁴ Convention, Annex III, Article 13.1(a).

⁵ Convention, Annex III, Article 13.1(b).

⁶ Convention, Annex III, Article 13.1(c).

Review Process

2. The Council shall regularly review both the system of payments and the rates of payments following the Commencement of Commercial Production in the Area.
3. The Council shall establish and regularly update a schedule for the review of the system of payments and the rates of payments following the commencement of Commercial Production in the Area.
4. The Secretary General shall ensure that the schedule referenced in paragraph 3 above is made publicly available.
5. Any review of the system of payments and rates of payments conducted pursuant to this Standard shall be completed within 12 months, unless otherwise decided by the Council.
6. The Council shall initiate the first review of the system of payments and the rates of payment on the five-year anniversary of the start of the first royalty period [i.e., January 1st or July 1st] corresponding to the first instance of commencement of Commercial Production in the Area.
7. Subsequent reviews of the system of payments and rates of payments shall be initiated on a regular basis every five years following the conclusion of the 12 month period allocated for the previous review under paragraph 5.
8. Based on the review schedule, the Council shall ensure that adequate funds are allocated from the Authority's budget to undertake an effective and thorough review of the system of payments and rates of payments.
9. The Council shall task the Commission with preparing terms of reference for a review. The Council shall review and approve the terms of reference for the review at a Council meeting prior to the official scheduled initiation of the review process.
10. During a review, there should be a presumption that rates of payment and system of payments should not change unless there is evidence that rates currently in force have been set too high or too low, or that the system of payments is not performing as anticipated. Furthermore, any proposed change to the rates of payments and system of payments shall be material in nature and not an represent an administrative nuisance [e.g., change in rate of less than [#] percentage point should not be recommended].
11. The Commission will be responsible for:
 - Undertaking the review
 - Engaging third-party experts
 - Ensuring consultations with relevant stakeholders, including Contractors, Sponsoring States, Member States eligible for a seat on Group C of the

Council, the Enterprise, and the Economic Planning Commission (once established).

- Providing the Council with recommendations, in accordance with the established timeframe set out in paragraph 7, on whether any adjustments are warranted along with a supporting rationale.

12. The Council shall consider the recommendations of the Commission and shall decide whether:

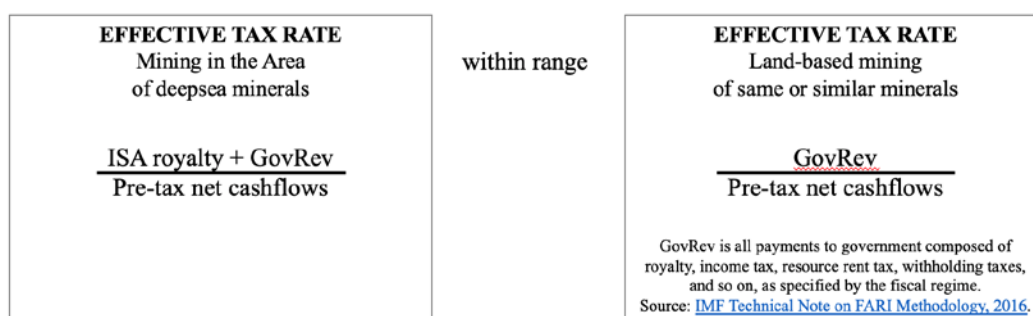
- to adjust the rates of payments and what the magnitude shall be for such adjustments; and
- to adjust the existing system of payments or introduce a new system of payments.

13. Should the Council decide to adjust the rates of payments or the system of payments, such adjustment shall:

- take effect from the beginning of the first royalty period following the Council's decision under paragraph 12 [i.e., January 1st or July 1st];
- apply to all future Contract Areas and all Contract Areas where the first five years of Commercial Production have elapsed by the time that the adjustment takes effect.

Draft Text for Relevant Standard**Methodology for the Review of Rates of Payments**

1. In line with common practice in cross-country comparisons of fiscal regimes imposed on land-based mining operations, the Commission, when undertaking a review pursuant to this Standard, will use average Effective Tax Rate (AETR) to make comparisons between the rates of payments for deep-sea mining operations and land-based mining operations exploiting similar minerals.
2. In addition, the Commission will draw on established methodology routinely used by intergovernmental organizations conducting such comparisons – for example, the International Monetary Fund’s Fiscal Analysis of Resource Industries (FARI) Methodology (see FARI Technical Notes & Manual, 2016).



3. The Commission will use the following information when conducting a review pursuant to this Standard:
 - Pre-tax net cashflows for a typical deep sea mining project
 - ISA and government revenue from deep-sea mining operations
 - Government revenue from land-based mining operations exploiting the same or similar minerals

Pre-tax net cashflows for a typical deep-sea mining project

4. The ISA Financial Model will be updated based on best available pre-tax net cashflows data for the five years preceding the most recent review of rates of payments.
5. The data referenced in paragraph 4 above will include prefeasibility studies submitted by Contractors as part of their Exploitation Contract application, feasibility studies submitted 12 months before the Commencement of Commercial Production and any annual reporting required during Commercial Production.

ISA and government revenue from deep-sea mining operations

6. Along with royalty payments to the Authority, the Commission shall review the fiscal regimes of governments who either already generate revenue from Commercial Production undertaken by Contractor(s) in the Area or those governments who could generate such revenue in the future if Contractor(s) with existing Exploration Contracts were to proceed with Commercial Production. For the purpose of information covered under this paragraph, the Commission will use the median rate of government revenue as the appropriate metric.

Government revenue from land-based mining operations exploiting the same or similar minerals

7. The Commission shall review the fiscal regimes of land-based mining jurisdictions that have accounted for at least 80% of global (excluding seabed mining) production of the same or similar minerals during the preceding five years. For example, when reviewing rates of payment for Contractors who exploit polymetallic nodules, the Commission will review land-based mining jurisdictions accounting for at least 80% of global (excluding seabed mining) nickel, copper, manganese, and cobalt mining production during the preceding five years. For the purpose of the information covered under this paragraph, the Commission will use the median rate of government revenue as the appropriate metric.
8. Subject to the review conducted pursuant to these Standards, if the AETR for mining in the Area is determined to differ from the AETR for land-based mining exploiting the same or similar minerals, the Commission shall propose a recommendation for consideration by the Council to adjust the rates of payments with a view to bringing the AETR for Contractors within the range of AETR for land-based mining operations exploiting the same or similar minerals.

The establishment of Standards for the review of the financial terms of exploitation contracts will enable the Authority to simplify the text of the regulations and move rates, deadlines, timelines, and technical considerations, etc. into a set of Standards that can be easily updated.

The establishment of Standards will ensure that there is a consistent, rigorous, transparent, and timely approach to the process by which the Authority will review the system of payments and the rates of payments.

The establishment of a defined review process will also ensure that the Authority can fulfil its mandate to organize and control all mineral-resources-related activities in the Area for the benefit of humankind as a whole.

Also, any review of the system of payments and rates of payments should consider the rates of payments across all financial mechanisms established by the Authority (e.g., potential additional tax, profit share mechanism, financial incentives, etc.) and be aligned with the review of the system of payments and rates of payments.

Finally, the establishment of a transparent review process by the Authority will ensure that member States and Contractors have confidence in the Authority's ability to manage the financial system of the Area for the benefit of humankind as a whole.