

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28<sup>TH</sup> SESSION:  
COUNCIL - PART II**

*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](mailto: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 18

**Green 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 18**

**Rights and exclusivity under an exploitation contract**

...

3. The Authority, in consultation with a Contractor, shall ensure that no other [Contractor] [entity] operates in the Contract Area for a different category of Resources in a manner which might interfere with the rights granted to the Contractor.

4. An exploitation contract shall provide for security of tenure and shall not be revised, suspended or terminated except [~~in observance of the applicable rules, regulations and procedures, as well as~~] in accordance with the terms of Regulation 18 ~~hereof~~ [~~set out in articles 18 and 19 of the Annex III of the Convention~~].

5. An exploitation contract shall not confer any interest or right on a Contractor in or over any other part of the Area or its Resources or any other part of the Marine Environment, other than those rights expressly granted by the terms of the exploitation contract or these regulations nor limit any freedoms of the high seas.

5bis. Adverse impacts from activities in the Area carried out under an Exploitation Contract must be limited to the Contract area.

6. The Contractor shall, subject to regulation 20, have the exclusive right to apply for [~~and be granted~~] a renewal of its exploitation contract.

7. In relation to exploration activities in the Contract Area conducted under an exploitation contract:

- (a) The Contractor may conduct Exploration activities within the Contract Area, in accordance with the proposed Exploration programme included in the Mining Workplan.
- (b) ~~the applicable Exploration Regulations shall continue to apply as set out in the relevant [Standards and/or] [Guidelines]. In particular, [The Contractor shall [be expected to] continue to [show] [exercise] due diligence in conducting exploration activities in the Contract Area together with [the payment of applicable fees and] the and shall reporting of such activities and its the results of its Exploration activities to the Authority in accordance with the applicable Exploration Regulations, including under regulation 38 (2) (k) and relevant Standards, taking account of Guidelines.~~
- (c) The Contractor shall also take into account:
  - (i) any recommendations issued by the Commission pursuant to the Exploration Regulations, and
  - (ii) provisions of the Exploration Regulations that relate to the protection and preservation of the marine environment, and environmental baselines and monitoring.
- (d) In order to progress from Exploration to Exploitation of a site within the Contract Area, where such Exploitation activity was not covered by the agreed Plan of Work, the Contractor must submit a new environmental impact statement and revised Plan of Work, in accordance with regulation [46bis] and which must be approved by the Authority in accordance with regulations [12-16].

#### Regulation [18 ter] Termination of Contract

##### 1. An exploitation contract can only be terminated:

- (a) by all parties to the contract by mutual consent;
- (b) by the termination of State sponsorship, in accordance with regulation 21;
- (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
- (e) by expiry of the term of the contract, without renewal.

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.

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

- Para 4: The role of the Regulations is to operationalize the Convention and provide further detail, where necessary. Hence, we suggest to not merely reference the Convention but to specify the circumstances under which a contract can be terminated in a new DR XX. These circumstances mentioned in the new suggested DR XX are not new but currently foreseen in different sections of the standard contract clauses. To streamline the regulations, a DR XX would offer the benefit of specifying all circumstances in one place in the regulations.
- Para 5: As Germany highlighted in 2022, DR 18 should specify that the exclusive rights under an exploitation contract do not limit the right to conduct marine scientific research and

other high seas freedoms. Also, the reference to “Area or its Resources” is narrow and leaves out living resources in the water column, hence the need for a broader reference to the Marine Environment.

- Para 5bis: We suggest adding para 5bis to clarify that any impacts from mining must be limited to the Contract area. Not doing so would mean that adjacent coastal states could be subjected to transboundary harm in contravention of international law. It could also mean that other contractors with contract areas nearby could see impacts on their contract area, which would undermine their baseline studies, monitoring programme, and spatial management (eg PRZ/IRZ). Questions of liability and financial compensation would arise if one contractor caused harm in the contract area of another contractor.

We also note that in its 2011 Advisory Opinion, the Seabed Disputes Chamber confirmed that the preservation of the marine environment in areas beyond national jurisdiction is an erga omnes obligation, meaning any state could bring a case against an entity in contravention of this obligation. To avoid costly litigation, it is advisable to have clearly defined spatial limits of impacts from mining so as to leave as little ambiguity as possible.

- Para 7: Germany supports the suggestions in para 7. Making the Exploration Regulations as a whole applicable during an Exploitation Contract will result in legal uncertainty. The Exploration and Exploitation Regulations differ in many respects, including monitoring and fee requirements.
- DR 18ter: Germany supports the proposal to collate the various circumstances under which a contract may be terminated, as currently set out across different Regulations, into a dedicated DR 18ter. This will improve clarity and legal certainty.