

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

OEWG

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

Transfer of rights and obligations under an exploitation contract

...

2. ~~An application for consent to transfer the rights and obligations under an exploitation contract shall be made to the Secretary-General jointly by the Contractor and transferee. 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.~~

2-Alt.1 — [An application for consent to transfer the rights and obligations under an exploitation contract shall be made. The Secretary-General will be informed jointly by the Contractor and transferee of the transfer of the rights and obligations under an exploitation contract.]

2-Alt.2 — [The Secretary-General will be informed jointly by the Contractor and transferee of the transfer of rights and obligations under an exploitation contract.]

3. The Commission shall ~~consider~~ and decide whether to recommend approval of the application for consent to ~~review and confirm the~~ transfer at its next available meeting, provided that the documentation has been circulated at least 30 Days prior to that meeting.

4. ~~The Commission shall [consider whether] [ensure that] the transferee [In recommending approval of the transfer, the Commission shall ensure that the transferee] Before the Commission can make a recommendation 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;

d 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 regulation[s ~~12 (4) and~~ 12] and ~~13(4)~~, and has provided Environmental Plans that comply with regulation 13 (4) (e); [and]
- f. Has deposited an Environmental Performance Guarantee [as set out in] [to the extent required under] 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] [sanction] 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. Permit 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.

7. Where the Commission determines that the requirements of paragraphs 4, 5 and 6 above have been fulfilled, it shall [recommend approval of] [confirm] the [application for consent] [transfer] to the Council. In accordance with article 20 of annex III to the Convention, the Council shall not [unreasonably] withhold [consent to a] [sanctioning of the] transfer if the requirements of this regulation are complied with. ¶Once the Council has received a recommendation from the Commission, the Council will inform the Contractor of the [Commission's][Council's] decision within 30 Days.¶

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

- Para 4 ALT: Germany suggest that transferring rights and obligations should only be permissible subject to the requirements under 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 suggested by the IGF and common in domestic law. Such taxation would contribute to ensuring that seabed mining would not receive a competitive advantage for terrestrial mining.

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.

- Para 2: Germany supports the original para 2, rather than 2.Alt.1 or 2.Alt.2.
- Para 3: Germany supports the suggested changes to para 3.
- Para 4: Our suggested addition aims to bring DR 23 into alignment with DR 18bis on the obligation of Contractors.
- Para 4(e): The transferee should meet all requirements under DR 13, not only those in DR 13(4).
- Para 4.bis: We support inclusion of this paragraph.
- Para 5: We support the suggested changes.
- Para 7: Germany supports the last suggested sentence which ensures clarity with respect to the role of the Council.