

**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:**

Environment

**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 55

**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 55.Alt 1**

**Purpose of the Environmental Compensation Fund**

1. Based on the polluter pays principle the Contractor shall pay for any necessary measure to limit, remedy and compensate any damage to the Area arising from the mining activities in the Area.

2. In cases where situations may arise, where a Contractor does not meet its liability in full while the Sponsoring State is not liable under Article 139 (2) of the Convention, the compensation fund may be used as a last resort.

3. The purpose of the Fund is to finance the implementation of any necessary measures designed to mitigate or compensate for any loss or damage to the Marine Environment, of the Area or coastal states, [or damage caused to third parties] arising from exploration-exploitation activities in the Area conducted under an Exploitation Contract. The Fund shall cover at least two situations:

(a) where there is environmental damage caused by contractor activities that were not consented; or

(b) where there is unforeseen environmental damage caused by contractor activities that were consented activities.

4. Compensation to any person affected by damage pursuant to paragraph 3 shall include the costs for implementation of any necessary measures designed to prevent, reduce, mitigate, limit, and remediate any damage to the marine environment and its resources.

~~5. This includes the restoration and rehabilitation of the Area when technically and economically feasible and in accordance with Good Industry Practice, Best Environmental Practices and Best Available Techniques when the costs of such measures and efforts cannot be recovered from a Contractor or Sponsoring State, as the case may be for environmental damage outside of consented activity.~~

5(alt): The Fund shall be subject to periodic review, including the consideration of whether restoration has become technically and economically feasible and could be carried out in accordance with Good Industry Practice, Best Environmental Practices and Best Available Techniques when the costs of such measures and efforts cannot be recovered from a Contractor or Sponsoring State, as the case may be.

### [Regulation 55.Alt 2

#### Purpose of the Environmental Compensation Fund

The Environmental Compensation Fund has two purposes:

- (a) In the event that there is environmental damage caused by contractor activities that were not consented, then in accordance with the polluter pays principle the contractor shall bear liability for the financing of any measure to Mitigate that environmental damage and shall also be liable for compensation to any person affected by that environmental damage, but if the contractor is unable to meet that liability in full, then, as a last resort, the environmental compensation fund may be called upon; and
- (b) In the event that there is unforeseen environmental damage caused by contractor activities that were consented activities then the environmental liability fund shall be used to finance any measure to mitigate that environmental damage and compensate any person affected by that environmental damage.]

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

- Germany prefers Alt 1 over the original draft but suggests merging Alt 1 and Alt 2. Using Alt 1 as a basis, we have inserted the helpful distinction between the two purposes of the fund as well as other wording from Alt 2 into Alt 1. Our amendments are, thus, designed to merge Alt 1 with Alt 2.
- Alt 1(3)(a): The distinction between harm caused by non-consented activities and those caused by consented activities but exceeding consented levels is important. The latter speaks to eg exceeding thresholds while the former covers harm from non-permitted activities, which will likely not be covered by insurance policies.
- Alt 1(3): Instead of exploitation activities, Germany suggests using the term activities in the Area conducted under an Exploitation Contract, purely because a Contractor may also conduct some exploration activities under an Exploitation Contract and these should be equally covered by the Environmental Compensation Fund.
- Alt 1(5): Germany notes that there is disagreement about whether or not to mention restoration and rehabilitation measures, given that neither of these are currently possible.

We suggest further discussion on this and propose wording in (5)alt to ensure restoration could become part of the Fund in the future, if it becomes feasible.

- As a general point, Germany sees a number of open questions regarding an Environmental Compensation Fund, such as the following, and will endeavour to put forward relevant proposals in future meetings:
  - Whether the Fund would also cover activities under an Exploration Contract, such as test mining?
  - How to calculate compensation to humankind for damage to ABNJ? This will be important in determining the size of contributions.
  - How the Fund is linked with the questions around effective control and the need to ensure that the Authority can recover compensation from a Contractor.
  - How the Fund is linked to potential insurance pay out.
  - Whether the Fund would also be used if the ISA was held liable under UNCLOS (eg Annex III Art 22)? If not, how would such a scenario be addressed?
  - Should the Fund be used when a sponsoring State is liable but cannot pay?
  - Does the Authority also need a compensation fund for economic damage to third parties? Including it in the ECF might lead to a situation in which insufficient funding is available for environmental compensation.