

**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:

Institutional WG & OEWG (both documents contain differing versions of DR 89 – we merged both versions here, hence the numbering in DR 89(3) is changed at the end)

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 89

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 89

Confidentiality of information

1. ~~[There shall be a presumption that any-All]~~ data and information regarding the Plan of Work, exploitation contract, its schedules and annexes or the activities taken under the exploitation contract ~~[are shall be]~~ public, other than Confidential Information.

2. “Confidential information” means:

~~(a) Data and information that have been designated as Confidential Information by a Contractor in consultation with the Secretary General under the Exploration Regulations and which remains Confidential Information in accordance with the Exploration Regulations;~~

(b) Data and information relating to personnel matters, the health records of individual employees or other documents in which employees have a reasonable expectation of privacy, and other matters that involve the privacy of individuals;

(c) Data and information which have been categorized as Confidential Information by the Council; and

(d) Data and information designated by the Contractor as Confidential Information at the time it was disclosed to the Authority, provided that, subject to paragraph 5 below, such designation is deemed to be well founded by ~~[the Data Committee Secretary General]~~ in accordance with the relevant Standard on the basis that there would be substantial risk of serious or unfair economic prejudice ~~[risk of harm]~~ if the data and information were to be released.

~~[(e) Documents exempt from disclosure due to attorney-client legal privilege].~~

3. “Confidential Information” does not mean or include data and information that:

- (a) Are generally known or publicly available from other sources;
- (b) Have been previously made available by the owner to others without an obligation concerning its confidentiality;
- (c) Are already in the possession of the Authority with no obligation concerning its confidentiality;
- (d) Are required to be disclosed under the Rules of the Authority ~~to protect the Marine Environment or human health and safety;~~
- (e) Are necessary for the formulation ~~from time to time~~ by the Authority of rules, regulations and procedures, ~~and decisions of the Authority~~ concerning the protection and preservation of the Marine Environment and safety, other than equipment design data;
- (f) Are environmental data, including all baseline and monitoring information ~~Relate to the protection and preservation of the Marine Environment, [provided that unless] [the Secretary General] may [agree that designate] such information is regarded as Confidential Information for a reasonable period[, subject to such conditions as may be appropriate.] [which shall under no circumstances exceed a period of [2] [4] years] where [the Commission agrees] there are bona fide academic reasons for delaying its release [on the terms proposed by the Secretary General, and the decision including the reasons are reported to Council];~~
- ~~(f)alt. Relate to the protection and preservation of the Marine Environment, provided that the Secretary General may designate such information as Confidential Information for a reasonable period, subject to such conditions as may be appropriate, where the Commission agrees that there are bona fide academic reasons for delaying its release on the terms proposed by the Secretary General and the decision including the reasons are reported to Council;~~
- (g) Are an award or judgment in connection with activities in the Area (save in relation to any Confidential Information contained in such award or judgment which may be redacted);
- ~~(h) Relate to contractor payments to the Authority, governments, state enterprises, other contractors, as well as payments and other forms of financial benefit received by the contractor from Sponsoring States;~~
- ~~(i) Relate to beneficial ownership of contractors;~~
- ~~(j) Relate to Sponsorship Agreements or other contractual arrangements between contractors and Sponsoring States; or~~
- (k) The Contractor has given prior written consent to its disclosure;
- (l) Relates to an area no longer covered by an exploitation contract; provided that following the expiration of a period of 10 years after it was passed to the Secretary- General, Confidential Information shall no longer be deemed to be such unless otherwise agreed between the Contractor and [the Secretary-General] **[in accordance with the relevant Guidelines,]** and save any data and information relating to personnel matters under paragraph 2 (b) above; **or**
- (m) Are in a category designated by the Council as not being Confidential Information].**

4. Confidential Information will be retained by the Authority and the Contractor in strictest confidence in accordance with regulation 90 and shall not be disclosed to any third party **[without reasonable cause or]** without the express prior written consent of the Contractor, which consent shall not be unreasonably withheld, conditioned or delayed, save that Confidential Information may be used by the Secretary-General and staff of the Authority’s secretariat, as authorized by the Secretary-General, and by members of the Commission **[as necessary]** for and

relevant to the effective exercise of their powers and functions.

5. In connection with paragraph 2 (d) above, a Contractor shall, upon transferring data and information to the Authority, designate by notice in writing to the Secretary- General the Information or any part of it as Confidential Information *describing, in general and non-prejudicial terms, any information redacted or required to be withheld from publication on the basis of confidentiality with an explanation of the reasons.* The Secretariat shall publish a copy of any such notice received upon receipt. If the Secretary-General, a member state, or another Stakeholder objects to such designation ~~[within a period of 30 Days]~~, the parties shall consult upon the nature of the data and information and whether it constitutes Confidential Information under this regulation, *and consult the Data Committee as appropriate.* During the consultations, the Secretary-General shall take into account any relevant *Standard or* policy guidance from the Council. *The Secretary-General shall report to the Council regarding the types and quantities of data that are designated confidential in accordance with this paragraph.* Any dispute arising as to the nature of the data and information shall be dealt with *[through the administrative procedure described in [insert here cross-reference to relevant provisions or Annex of the Regulations setting out administrative decision review procedures].* ~~in accordance with Part XII of these regulations.]~~

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

- Para 2(a): Germany supports the deletion of para 2(a) as it would be inconsistent to consider some data confidential under an exploration contract but not under an exploitation contract. The relevant exploration contract would have expired by the time this provision becomes relevant. Any information carried over from the exploration phase that should remain confidential can be justified under paragraphs 2(b) – (e).
- Para 2(d): Germany agrees with the Chair’s note about establishing a Data Committee or a detailed Standard to determine whether Contractor data should in fact be confidential.
- Para 3(e): Minor changes to ensure future decisions/RRPs by the Authority apply to all contractors.
- Para 3(f): Designating data as confidential should not be done ad hoc on a case-by-case basis but should follow pre-agreed, transparent criteria.
- Para 3(h)-(j): We support the inclusion of the proposed additional paragraphs.
- Para 5: Given the importance of transparency and public participation as good governance standards, para 5 should be widened to allow stakeholders other than the Secretary-General to object to data being kept confidential and introduce a transparent process to evaluate confidentiality.