

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:** Financial terms of an exploitation contract
2. **Name(s) of Delegation(s) making the proposal:** India
3. **Please indicate the relevant provision to which the textual proposal refers.**

DR 62

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 62 para 1

The Council shall, based on the recommendations of the Commission, apply the provisions of this Part ~~in~~ on a transparent, uniform and non-discriminatory basis manner, and shall ensure equality of financial treatment and comparable financial obligations for Contractors to counter any disparity arising out of any grossly incomparable concentration of given mineral resources.

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

The Statements “Comparable financial obligations for Contractors” needs elaboration/explanation. It appears that Article 13(1) (c) envisages situations where the financial obligations for contractors may have to be treated differently but in a manner that is comparable. Such a situation may arise, for instance, from a case where concentrations of given mineral resources per unit area in two Oceanic regimes (Pacific and Indian Oceans) are grossly different and therefore making financial obligations identical in the two cases will amount to unequal financial treatment for contractors. Therefore Regulation 62 needs to incorporate explanation to make it implementable. The Regulation 62 may be expanded by adding “to counter any disparity arising out of any grossly incomparable concentration of given mineral resources”.

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

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DR 63
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 63 para 1

1. The Council may, taking into account the recommendations of the Commission, in accordance with the Standards and taking into account the Guidelines, provide for incentives to Contractors, including financial incentives, on a transparent, uniform and non-discriminatory basis, ~~to Contractors~~ to further the objectives set out in article 13 (1) of annex III to the Convention.

Regulation 63 para 2

2. Furthermore, the Council may provide incentives, [including financial incentives,] to ~~those~~ Contractors to undertake entering into joint arrangements with the Enterprise under article 11 of annex III to the Convention, ~~and developing~~ including to developing States or their nationals, to stimulate the transfer of technology thereto and to train the personnel of the Authority and of developing States.

Regulation 63 para 3

3. The Council shall ensure that, as a result of the incentives provided to Contractors under paragraphs 1 and 2 above, Contractors are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.

Regulation 63 Para 4

[4. Any incentives shall be fully compatible with the policies and principles under Regulation 2].

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

- Para 1 not directly consistent with Article 13, Further, it does not define the eligibility criteria as to who will qualify to receive incentives. The financial incentives should be qualified and explained or the para itself be dropped. The formulations in Article 13 (1) (d) and Para 2 of the Regulation do not convey identical position. It is suggested to retain the formulation in Article 13(1) (d) and therefore Para 2 may be modified as mentioned.
- There is an ambiguity in the statement “incentives (including financial incentives)”. There is a need to define incentives other than financial incentives.
- Provision of incentives is fully consistent with Article 13 (1) (d) and must be retained.
- Financial incentives must be defines/qualified as to the form or nature of such incentives. Also, source of funding such incentives must be identified.
- It needs clarity if the incentives be one-time event or for any specified period.
- There may be a separate Para to explain the terms incentives, financial incentives and source for funding the incentives. The suggested explanation for incentives may be in terms of partial relief in Royalty payments for a limited period to be recommended by the Commission on the basis of extent of participation in the Enterprise and nature of transfer of technology to Enterprise and to developing nations.

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DR 71 para 1 (c)

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Regulation 71

Information to be submitted

1. A royalty return shall include the following information for each royalty return period, ~~in accordance with the any applicable Standards and taking into account~~ the any Guidelines:

- (a) The quantity in ~~wet metric tons~~ [wet metric tons and] dry metric tons of mineral-bearing ore recovered from each Mining Area;
- (b) The quantity and value by Mineral in ~~wet metric tons~~ [wet metric tons and] dry metric tons of the mineral-bearing ore shipped from the Mining Area; The value and the basis of the valuation (by Mineral) of the mineral-bearing ore sold or removed without sale from the Mining Area, as verified by a ~~suitably qualified person~~ Suitably Qualified Person and supported by a representative chemical analysis of the ore by a certified laboratory, with the cost of weighing and testing to be borne by the Contractor;

~~(c) — Details of all contracts and sale or exchange agreements relating to the mineral-bearing ore sold or removed without sale from the Contract Area; and~~

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

Comments: There is no rationale to include 1(c) in the Royalty return. What purpose will the details of all contracts and sale agreements etc. serve. Additionally, the sale agreements, if any, may be confidential. This para is best deleted.

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DR 74 para 2 (a)
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 74 Proper books and records to be kept

Regulation 74 para 2(a)

2. The Contractor shall prepare such records in conformity with internationally accepted accounting principles that verify, in connection with ~~each~~ Mining Area, inter alia:

- (a) Details of the quantity and grade of each Mineral recovered from ~~each~~ Mining Area;

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

The term “each Mining Area” needs explanation. If multiple Mining Areas are from the same Contract area, why should the reporting be required separately from each mining area under the same contract area. Further, if the term “each Mining Area” is used in 2(a), why is it missing from 2(b)? since 2(b) only refers to each Mineral from the Mining Area. However, if the term each Mining Area is used to imply each contract area, the term may be so modified. Else, the term “each” may be dropped preceding Mining Area.

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6. Name of Working Group: Financial terms of an exploitation contract

7. Name(s) of Delegation(s) making the proposal: India

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

DR 79

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Regulation 79

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

The annual interest rate may be a function of extent of delay. It is proposed as 5% for a duration of delay by a month and a maximum of 10% for a delay beyond a month but less than 3 months.

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

It is suggested to retain 2 Alt. 3.

Suggested 5 new paragraphs between para 2 and 3 do not serve much purpose since there are working guidelines between LT

C and the Council.

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1. **Name of Working Group:** Financial terms of an exploitation contract
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3. **Please indicate the relevant provision to which the textual proposal refers.**
DR 83 bis
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 83 bis

Beneficial Ownership

- ~~1. A Contractor shall submit information to the Secretary General to be included in a Beneficial Ownership Registry in accordance with relevant Standards and Guidelines.~~
- ~~2. The Beneficial Ownership Registry shall be published through the Seabed Mining Register.]~~

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

The proposed new Regulation 83. bis seems undesirable for inclusion here and may be deleted. This is the internal domain of the Contractor.

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DR 23 para 2

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

Regulation 23 para 2.Alt.1

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 proposed transferee to the Secretary General. The Secretary General shall transmit that application to the Commission which shall give its recommendations to the Council. of the transfer of the rights and obligations under an exploitation contract.]

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

We support DR 23 2 Alt. 1 with suggested edit, to give clarity to the matter.

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DR 23 para 3

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

Regulation 23 para 3

3. The Commission shall ~~{consider/examine and decide whether to recommend approval of}~~ the application for consent to ~~[review and confirm the]~~ transfer ~~for completeness of the documentation and make its recommendation within 90 days of the date it receives the application provided the application has been received by the Commission/Secretary-General at its next available meeting, provided that the documentation has been circulated~~ at least 30 Days prior to that meeting.

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

The suggested edits gives proper clarity to the process.

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DR 23 para 5 b.

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Regulation 23

Transfer of rights and obligations under an exploitation contract

Regulation 23 para 5

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~~

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

The concept of monopolizing is very critical but implementability under question. Is the issue of monopoly restricted only to the transferee? Should a Contractor holding multiple contracts for the same mineral having plans with, say, over 75% of the value of production in the Area will also be prohibited from doing so? Therefore, the issue of monopoly may be removed from this section and inserted elsewhere appropriately which could be applicable for both the Contractors as well as Transferee. Also, 75% criteria is too soft and may be replaced by 50% against monopolizing.

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Enclosure II Appendix IV

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

It is ideal to formulate the Royalty rates based on nodules as the raw ore. However, until the stage of price discovery of nodules is reached where the nodules become tradeable commodity, it is in order to follow the concept of Aggregate Relevant Metal. The nodule resources may be considered as low-grade manganese ore relating to Manganese Content. There seems to be a debate whether Manganese metal or manganese ore should be considered for computing Relevant Metal Value. This debate is fruitless and infructuous since both options produce similar results as demonstrated in subsequent section provided the pricing for Mn-ore assumed in the calculation is market linked. Therefore, it is better for reasons of simplicity and consistency that Relative metal value be computed based on listed price of Mn metal just in line with other metals like Cu, Ni and Co. However, what is most important is the determination of Royalty Rates. It is important for the credibility of these Rates that these be aligned with Royalty Rates for similar metal/mineral for land-based ore deposits, even ignoring a significantly higher cost of mining for seabed resources compared to land-based mining.

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Enclosure III

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

As suggested before, the Royalty rates must be aligned with those of the land-based ore deposits. The available data show (IMG Consulting Report of June 12, 2022) that the Royalty Rates for all the metals under reference generally lie between 2 to 5%. Therefore, the rates proposed in this draft appears way too high and rate like 20-25% will only disincentivise the investors. The rates must be reviewed and Royalty rates for land-based deposit must serve as the benchmark.

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ENCLOSURE IV

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

There appears to be some ambiguity/error in case of Royalty, Relevant Metal Value calculation for Mn. Enclosure III mentions listed price for Manganese as the quoted price for Manganese Ore. Also, in Enclosure IV, under official listings, it mentions “appropriate reference to Manganese Ore to be determined”. However, in the example given for Relevant Metal Value for Manganese, it mentions average listed price for the relevant metal. In the Table for shipment wise calculations, the Relevant Metal Value for Manganese is calculated as: Quantity x Average grade of the Relevant Metal x Average listed price for the Relevant Metal. Thus, in the given table for shipment wise data for Manganese, the average listed price used is USD 490/t which, obviously, is not the price of Mn Metal but is likely to represent price of Mn Ore (?) There is therefore a contradiction in the calculation. In case USD 490/t represents the price of Mn Ore/t, then the calculation of Relevant Metal Value (USD) will change as under, (i) 6262200 - 220500000 (ii) 67450000 - 237500000 (iii) 70290000 - 247500000
Total 200362000 - 705500000, Consequently, the aggregate Relevant Metal Value changes from USD 1,035,262,000 to USD 1,540,400,000. Again, this changes the Notional Relevant Metal value from USD 690/t to USD 1027/t. Two inferences emerge from the above calculations: (i) Aggregate/Notional Relevant Metal Value/t remains unchanged whether pricing of Mn-metal is considered or the pricing of Mn ore is considered provided the price range used for the Mn ore is close to market value. This is evident from the original calculated value for Aggregate Relevant Metal Value based on Mn Metal pricing as USD 1,591,760,000 which is very close to the now calculated value of USD 1,540,400,000 based on Mn ore pricing. Therefore, for simplicity and consistency, it is better to use Mn metal value rather than Mn Ore value. If this logic is accepted, necessary changes may have to be made in the text as also in the Table for Notional Relevant Metal Value and Royalty Rates. (ii) For this level of

Notional Relevant Metal Value in the range of USD 1060 (which is the most likely range of value), the proposed Royalty Rates of 12.5% to 25% appears very high compared to Royalty Rates for similar ores on land. For the Notional Relevant Metal Value of USD 1060/t and using even lower Royalty Rate of 12.5% proposed in the text, the Royalty amount work out to USD 132/t. For a 3 million tonne per annum mine, the annual Royalty amount work out to USD 396 million which is much higher than even the projected annual opex of USD 300 million. The Royalty Rates need alignment with land-based ores and can't be entirely disconnected with them.

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3. **Please indicate the relevant provision to which the textual proposal refers.**
Special Submission: Special Royalty rate for Indian Ocean
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5. **Please indicate the rationale for the proposal. [150-word limit]**

It is well known now that the Ocean Regimes, Pacific Ocean and Indian Ocean have grossly different concentrations of Nodule Resources. The available data suggest that the nodule abundance(kg/m²) in the contract areas in the Pacific (CCZ) is 3 time higher than these in the Indian Contract Area. As a consequence, it emerges that(i) For the same mine capacity, area required for mining in Indian Contract Area will be 3 times larger than the area required in CCZ Contract area.(ii)The capex as well as opex under identical conditions of mining will be higher for Indian Contract Area by over 50% compared to contract area in CCZ. This inherent feature of nodule distribution in the two regimes suggest that applying uniform Royalty Rates across two regimes with grossly different mining costs will imply unequal treatment to contractors in the two oceanic regimes. Cost of mining is an important input in determination of Royalty Rates. Conceptually, such a view was also shared in the ISA information Webinar for Council members and other states of the ISA, 12th June, 2020 which stated thus: “Royalty Levied on production either value or volume. Value most common and calculated based on sale value often with some specified production costs deductible (2 to 3 % upto 10 to 12%)”. Since, the mining cost in Indian Ocean is higher by a very high magnitude (>50%), it is submitted that the Royalty rate for Indian Contract area must be reduced by at least 50% of the applicable rates for Pacific. This will ensure equality of treatment and comparable financial obligations for Indian Contractor in line with such a provision in the Article 13(1) (c).