



# Technology Transfer Rules in the Actual Draft Regulations on Exploitation

Andreas Kaede, Attorney at Law  
Gerlingen, Germany  
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Rechtsanwalt Andreas Kaede  
Lammstrasse 6  
D-70839 Gerlingen  
Germany

Tel. +49 7156 433 100-103  
Cell: +49 173 928 70 20  
Mail: [andreas.kaede@t-online.de](mailto:andreas.kaede@t-online.de)  
Web: [www/kanzlei-kaede.de](http://www/kanzlei-kaede.de)

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## **Disclaimer:**

**The following presentation sets out the personal findings and opinions of the author. It is not intended to provide (a) a comprehensive treatise on the subject, or (b) legal advice in any manner.**



# Technology Transfer Rules in the Actual Draft Regulations on Exploitation

## 1. Technology Transfer (“TT”)

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- 1.2 Reasons for/Purposes of TT
- 1.3 Modes of TT

## 2. TT Obligations in the Draft

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## 1.1 Technology Transfer – what does it comprise

- **Conveyance** of technical information about development, industrialization, and commercialization of
  - products,
  - services to be provided,
  - processes to be executed.
- **Example f.i.**
  - General technical spec., BOM, Drawings, wiring diagrams, tolerances, interfaces, operation and servicing instructions, FMEA, software
  - Testing results, development documentation and – environment
- This presentation will not contemplate TT in form of **mere publication** as e.g in a technical journal or website



## 1.2 Reasons for/Purposes of TT

### **Ocean as a „Shared Resource“**

important for all to be on the – largely - same level of knowledge (i.a. re environment);

### **Historical Reasons**

UNCLOS as a „child“ of late decolonization phase: High demands from the 3rd world on the (technical) resources of the 1st and 2nd;

### **Synergies for Mankind`s „Single Shot“**

in many fields (e.g. DSM) we have one chance to extract, one chance to pollute (or prevent pollution). Thus try to bring knowledge together to have the best means available;

### **Cost Control**

Co-operation can entail standardization thus reducing TCOP for both gear and harvest.

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## 1.2 Reasons for/Purposes of TT (2)

### **The Field of Tension:**

#### **Economic Interest:**

Technology is and should be a **core asset** of the industrial company. Money and brain may have gone into extensive development to provide you with a unique sales proposition you are reluctant to share.

#### **Preparedness for TT as „Entry Ticket“ to DSM**

Conversely, humanity/society have a vested interest in receiving and promulgating “ technology for the causes cited on the previous slide. → Only when ready to share your technical secrets, you will be admitted to the world of DSM under the governance of i.a. UNCLOS and the Draft Regulations.

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## 1.3 Modes of TT

- The „classical“ way: **provision of documentation** as e.g. in a license
- Technical **training**
- **Dissemination** of scientific results
- **Supply** of products, provision of services
- Technical/scientific **discussion among experts**, e.g. on a congress like the present DSM Summit
- Under the DSM régime, i.e. the Draft Regulations on Exploitation, you will, or will have to, practise virtually all of the above methods.

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## 2.1 The actual „Draft Regulations“

- Document of reference:

**“Draft Regulations on Exploitation of Mineral Resources in the Area”,** document ISBA23/LTC/CRP.3 of 8 August 2017.

- Status:

**Fulltext Draft, including template provisions for applications for approvals of a Plan of Work, and contracts between contractor and ISA,** promulgated by the ISA secretariat on 10 Aug 2017 for consideration by Stakeholders (55 submissions received).

- Further steps:

**review by LTC and Council, i.a. in the light of Stakeholder Submissions, in the course of their 2018 sessions.**



## 2.2 TT rules in the Draft Regulations: Systematics

### Two main types of regulation for TT

- **Direct:** obligation of contractor specifically stated in the text of either Rules or the Annexes/Templates (**example:** Draft Regulation 35: „the contractor shall conduct... the training...”)
- **Indirect – incorporated by reference:** Rules refer to other Instruments, e.g. UNCLOS (**example:** Draft Regulation 4 No. 2 (a): „each applicant shall...comply with...the applicable obligations...created by the...Convention”)

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## 2.2.1 Direct Obligations

- **“Training Plan” (Draft Reg. 35) = only direct obligation in the Draft entailing potential TT directly to other exploiting entities:** obligation of contractor to conduct training of personnel of the Authority and developing states according to a pre-approved training plan. Contents/volume of training not conclusively described.

**The following direct obligations require TT only to the Authority in the course of application and reporting. However, publication by Secretary-General of EIS, EMM, CP (Draft. Reg. 20) ; relation to Draft Reg. 75 (Confidentiality) unclear.**

- **„EIS” (Draft Reg. 19 No.2):** Description of Mitigation, Monitoring and management measures
- **Pre feasibility study (Annex II Nr. 2 lit (e)):** Details of equipment, methods and technology expected to be used in carrying out the proposed Plan of Work

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## 2.2.1 Direct Obligations (2)

- **Environmental Scoping Report (Annex IV lit (m) (n)) :** Description of nature, scope, methodology of present and future investigation and studies to predict Environmental Effects
- **EIS (Annex V No. 3.3 ):** Section of the EIS should describe in technical detail the most important project components, e.g. Mining, Transportation, Processing, Support Equipment.
- **Emergency Response Plan (Annex VI, (d) vii and viii):** Applicant to provide description of the safety & environmental management system as well as the mining ops safety features
- **Environmental Management and Monitoring Plan (Annex VII lit (j)):** Among a host of other information about his prevention and mitigation measures regarding environmental harm, applicant is to submit description of the technology to be employed.

## 2.2.2 Indirect Obligations

- **Method “incorporation by reference”:** The contractor is held by a general clause in the Draft Regulations, or e.g. the contract, to comply, respect, or hold applicable the rules of other international instruments, mainly UNCLOS. This includes TT. **Examples in the Draft Regulations:**
- Draft Reg. 4 No. 2. (a ), to accept as enforceable the applicable Rules of the Convention & rules, regulations of the authority
- Draft Reg. 4 No. 2 (d) ), Reg. 29 Nr. 3, to comply with the national laws... of the Sponsoring State made pursuant to Art. 139, 153(4) and Ann. 3 Art 4(4) of UNCLOS
- Section 18 of the „Standard Clauses for Exploitation Contracts” (Annex X of the Draft Regulations) , whereby the Contract is governed by...the rules...of the Authority, Part XI of the Convention , the Agreement (= 1994 Amendment of the Convention) and other rules of international law...

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## 2.2.2 Indirect Obligations (2)

- **Examples of UNCLOS rules referenced:**
- **Common Heritage Principles**  
Art. 144 UNCLOS: Authority and States promote co-operation & TT;
- **Marine Scientific Research**  
Art 244 UNCLOS: States to promote the dissemination of data and other results of marine research;
- **Development & Transfer of Marine Technology**  
Art. 266 et seq. UNCLOS: States to promote dissemination of marine technology, particularly to (land locked) developing countries;
- **DSM Régime**  
Section 5 of Annex to 1994 Amendment of UNCLOS: following slide

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## 2.2.2 Indirect Obligations (3)

„**Transfer of Technology**“ , Annex III, **Art. 5** of UNCLOS, replaced by the 1994 Amendment to UNCLOS by the latter's „Annex, **Section 5**“:

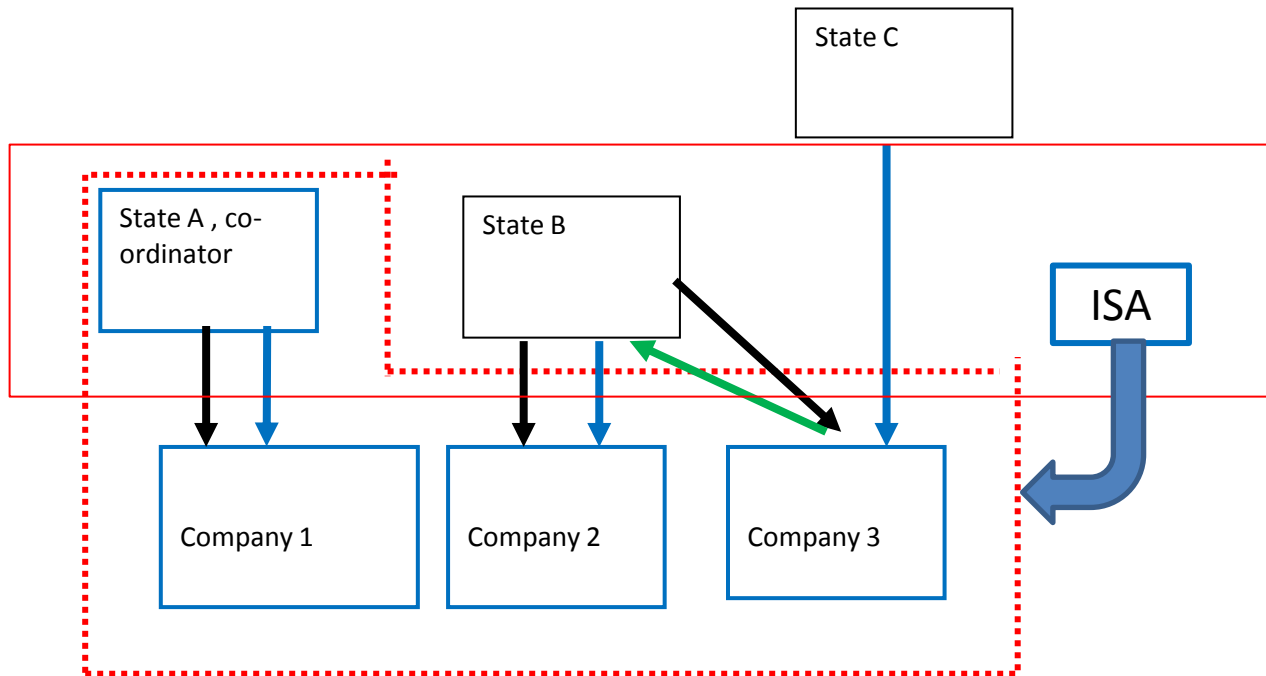
Old „**Art. 5**“ stated very detailed obligations of technology transfer and, among others, made a contractor's readiness to grant rights of use to the Enterprise and certain Developing States at fair&reasonable conditions a prerequisite for obtaining an exploration license from the authority.

New „**Section 5**“ provides:

- The Authority may request states and contractors to co-operate with it to facilitate acquisition of technology at fair&reasonable conditions by Enterprise or Developing States, consistent with effective protection of intellectual property rights.
- States shall promote international technical and scientific co-operation regarding the Area.

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## 3. Impact on Contractors

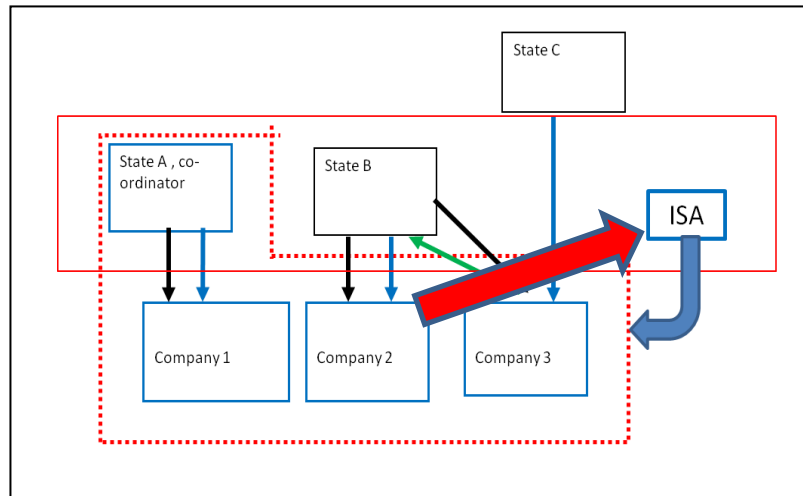


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## 3.1.1 Modes of Obligation – direct by contractor

D. Reg 35: „**conduct a Training Plan!**“

Annex V No. 3.3 : „**for EIS, describe your Project Components in technical detail!**“



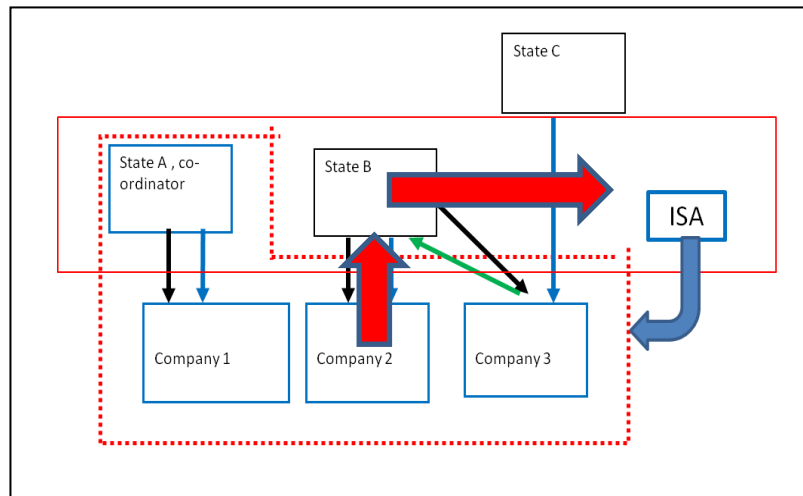
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## 3.1.2 Modes of Obligation – indirect via State

D. Reg 4 (2) a: „**accept the Convention Rules as enforceable!**“



Rule: Annex, Section 5: „**States shall promote international technical and scientific cooperation regarding the Area!**“



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## 3.2.1 Action - Interpretation

Annex V No. 3.3 : „**for EIS, describe your Project Components in technical detail!**“

**D**

Rule: Annex, Section 5:  
„**States shall promote international technical and scientific co-operation regarding the Area!**“

**I**

- Very broad rules, both for contractor („**D**“) and State („**I**“)
- → Interpretation possible, and necessary. This might be
- for **D**: fulfill (i.e. disclose technology) as much as necessary to serve the object (i.e. environmental assessment), but as little as possible (to safeguard your technology).
- For **I**: cause your subjects to co-operate technically as much as necessary (to foster mining), but as little as possible (to safeguard technology).



## 3.2.2

## Action – compliance

- **Direct TT obligations** (Applicant → ISA/UNCLOS)
  - Disclosure would expectably be oriented closely at (1) the requirement in the form/schedule, and (2) purpose of the rule
  - If possible, ISA and applicant should attempt to establish out front which criteria would be applied to judge a disclosure „satisfying“ or „unsatisfying“
  - In technically sensitive fields, ISA and applicant should establish supplementary confidentiality rules
  - Patent application grace periods to be observed



## 3.2.3

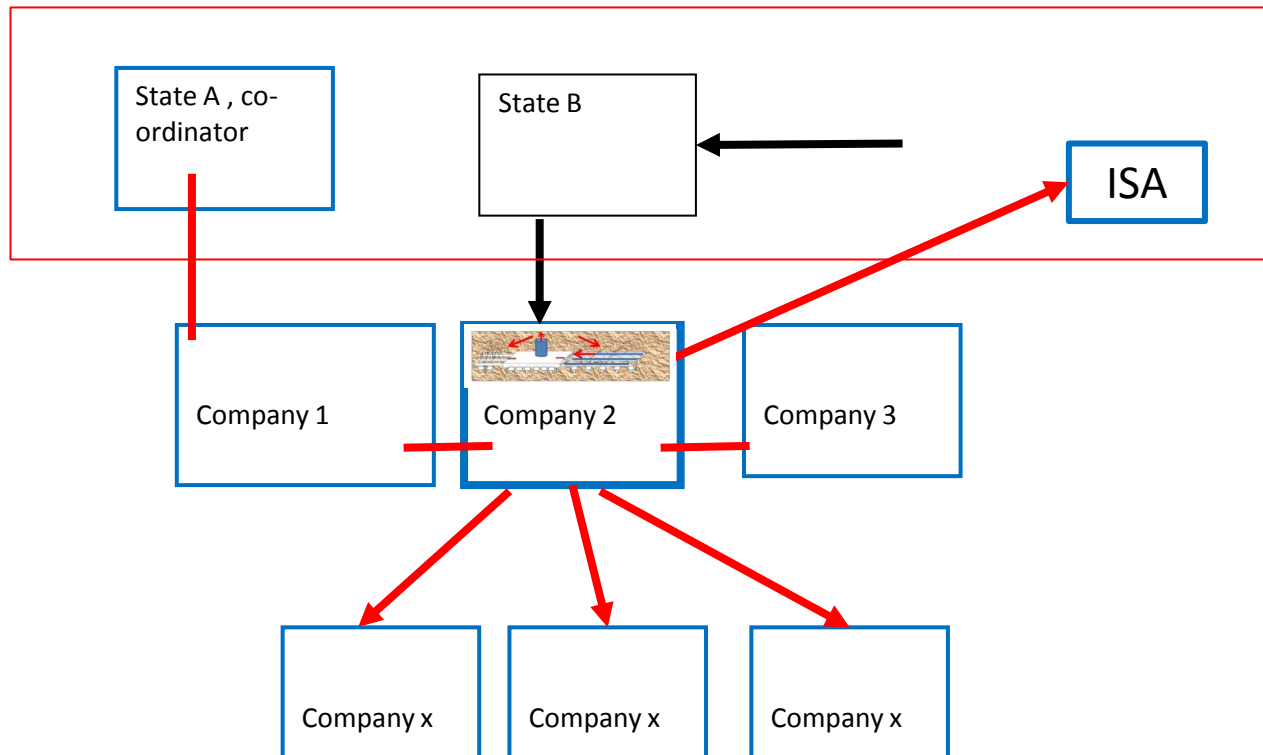
### Action – legislation, contracting

- **Indirect TT obligations** (Applicant → State → ISA/UNCLOS)
  - Legislation, administrative acts by the (Sponsoring)State (e.g. readiness to license technology as qualification for a membership in a mining consortium)
  - Applicant bound by law of Sponsoring State
  - However, substantial margin of appreciation at Sponsoring State what to enact and how to enforce
  - Contracting also expectable between the Consortium members – additional TT ensuing

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## 3.2.3

## Action – legislation, contracting



However, it probably  
looks worse than it will  
become...

Thank you for your  
attention!!