

## **SECTION 3: ITER CANADA PLAN TO HOST ITER**

### **THE ITER INTERNATIONAL AGREEMENTS**

#### **3.1 INTRODUCTION**

The establishment of appropriate international agreements that will allow the current Iter Parties to meet all of their scientific, technical, financial and socio-economic goals, while protecting the interests of the Canadian host entity and Canada is critical to the successful implementation of Iter. As will be described in this Section, Iter Canada's Plan can fully meet the intent of all of the Iter Parties' requirements.

Recent discussions, as part of the Exploration process amongst the Iter Parties (including Iter Canada participation as a technical expert to the EU), led to the definition of a framework for the Joint Implementation Agreement, the Coordinated Technical Activities arrangements and suggestions on the Scheme for Negotiations. The Iter Explorers' Final Report will become the basis for the negotiation process leading to the final Iter Joint Implementation Agreement. The Exploration process also identified a process and timing for receiving site offers and initiating subsequent negotiations.

In Section 4 of this Plan to Host Iter, Iter Canada proposes a modified Negotiation process, including a detailed proposal for the actual negotiations, that could lead more expeditiously to the final agreements to implement Iter. As noted in Section 4, the Explorers recognized the need to enter negotiations "without undue delay" after a site offer as a key priority.

Based on the Final Explorers' Report, Canadian participation is accepted into the Negotiations and Coordinated Technical Activities on a similar basis to EURATOM (the European Union), Japan and the Russian Federation, and on receipt of this Plan to Host Iter submitted by the Government of Canada. Further, due to the timing of this submission before the end of the Engineering Design Activities (EDA), the Negotiations should commence immediately, as agreed to and defined in the Final Explorers' Report.

That Canada now becomes a Participant in the Negotiations and the Coordinated Technical Activities implies no obligations to the existing Iter agreements covering the current Engineering Design Activity over and above what already exists.

Notwithstanding any provisions of the Final Explorers' Report and that informal consultations have commenced between the Iter Parties with respect to Negotiations that are intended to lead to the Iter Joint Implementation Agreement, this Plan to Host Iter submission is based only on terms and conditions as defined in this document. However, we believe that our Plan to Host Iter conforms with the principles of the decisions, intent or guidelines established to date. In fact, we believe the special conditions of the Iter Canada Plan will strengthen and enhance the anticipated agreements to the benefit of all the Iter Parties.

The proposals described in this Section fully support the detailed terms and conditions described in the Technical, Schedule and Organization, Licensing, Socio-Economic Benefits, and Financial sections of this submission.

**This Plan prepared by Iter Canada is based on the assumption that Canada becomes a Participant in the ongoing negotiations by the Iter Parties to establish all the international agreements needed to commence construction of Iter at the Clarington site. Iter Canada also reiterates that the submission of this Plan to Host Iter does not at this time state, imply or infer that this Plan has the final approval of the Government of Canada. As described in Section 4, consideration for approval would only follow after the full definition of the Iter Joint Implementation Agreement is achieved during Negotiations.**

This Section 3 of the Plan will concentrate on issues that are material to the understanding of the Iter Canada Plan, especially as they relate to terms & conditions that may be alternative solutions or different to current Iter Party conclusions or proposals.

### **3.2 THE STRUCTURE OF ITER WITH CANADA AS HOST**

The proposed structure for the Iter project sited in Canada is shown in the Figure 3-1 on the next page. This structure has been developed in consideration of Iter Canada's understanding of the requirements of the current Iter Parties, and also to give the current and any future Iter Parties the greatest possible flexibility for the control of the project over the full life of the project. This structure also takes full advantage of the Canadian legal structure to the benefit of all the Iter Parties.

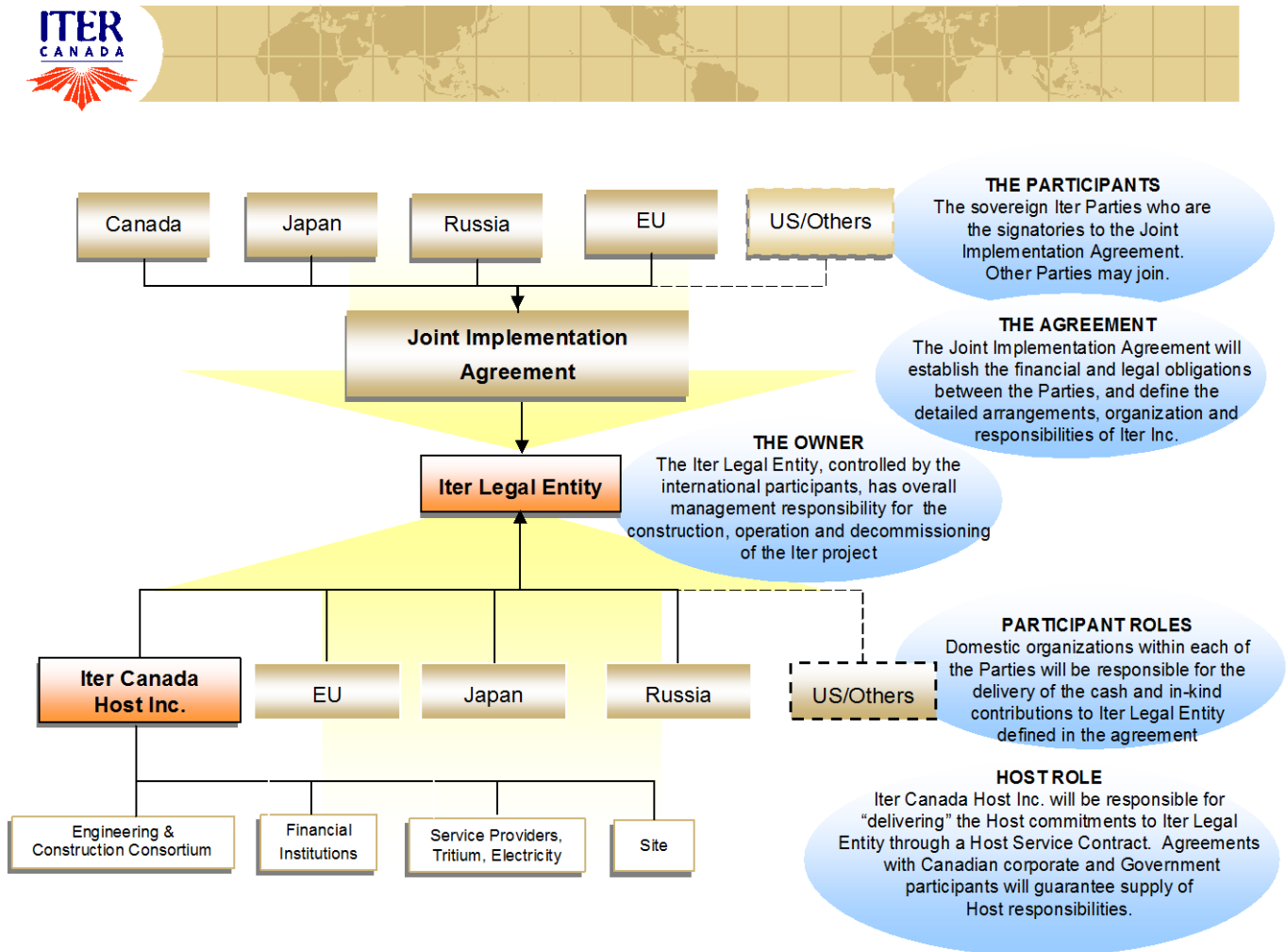
As shown in Figure 3-1 the following are the key elements of this structure:

- **The Participants:** These are as defined by the parties to the Negotiations and Coordinated Technical Activities, as defined by Exploration discussions, and includes the anticipated sovereign Parties to the Joint Implementation Agreement: Canada (as Host), Japan, the Russian Federation, and the European Union (Euratom).

As shown in Figure 3-1, Iter Canada believes that there is an advantage to the Iter project for additional Participants, especially the United States. Iter Canada would welcome the opportunity to enter formal discussions with the Iter Parties and the United States to facilitate the re-entry of the United States into the Iter family.

- **The Joint Implementation Agreement:** This will establish the financial and legal obligations between the Iter Parties and define the detailed arrangements, organization and responsibilities of the Iter Legal Entity. Section 3.3 below describes this in more detail.

**Figure 3-1: The Iter Structure in Canada, following approval of the Joint Implementation Agreement**



The “Owner” of Iter is the Iter Legal Entity, an international organization established by the Joint Implementation Agreement. This is described more fully in Section 3.4 below, including a transition period Canadian domestic organization during the negotiations phase.

**Participant Roles:** Domestic organizations within each of the Iter Participant countries will be responsible for the management and delivery of cash and in-kind contributions to the Iter Legal Entity during all phases of the Iter project, as defined in the Joint Implementation Agreement. For Canada, this will be an organization called Iter Canada Host Inc. Section 6 of this Plan also highlights more detailed relationships required between these Domestic Organizations during the Construction Phase.

**Host Role:** Figure 3-1 gives additional detail of the Host responsibilities as applied to Canada as host. For Canada, many of these host obligations would be delivered under a Host Services Contract, as defined in Section 3.6 below, as well as the obligations to

provide the base Construction Phase host scope, as defined in Section 5. Iter Canada Host Inc. will be a Canadian domestic corporation.

### **3.3 THE JOINT IMPLEMENTATION AGREEMENT**

The framework of the Joint Implementation Agreement has been developed by the Exploration process, and Iter Canada generally agrees with the conclusions of the Final Explorers' Report. This draft framework, should include, but is not limited to the following modified listing, subject to Negotiations and ultimate approval of the Government of Canada:

- Operating provisions
- Institutional structure of the project (Iter Legal Entity, Council, Director, etc.,) (See Section 3.4 below)
- Legal personality, establishment and management structure of the Iter Legal Entity
- Cost/Benefits sharing during construction, operation, exploitation and decommissioning (See Section 3.5 and 3.6 below)
- Budget and Accounting
- Staffing
- Procurement scheme (See Sections 3.5 and 3.6 below)
- Information and intellectual property
- Privileges and immunities
- Applicable laws and regulations to the Iter Legal Entity
- Decommissioning scheme
- Liability
- Participation of third parties
- Guarantees
- Decision Processes and Procedures
- Closing Provisions

The Guarantees item has been added to the framework defined in the Explorers' Report listing, as Iter Canada believes there is a requirement for the Iter Parties to explicitly acknowledge the commitment to special obligations being undertaken by a host of Iter. Attachment 3-B is a draft framework for such a payment and performance guarantee from the non-host Parties to the host Party, ie. the sovereign guarantee.

The Decision Process and Procedures item has been added to define the processes and procedures, both between the Iter Parties and within the Iter Legal Entity. Iter Canada considers it is critical to the successful implementation of Iter that a well defined delegation of decision making is given from the Iter Parties to the Iter Legal Entity, under the authority of the Joint Implementation Agreement. For example, the Iter Legal Entity must have the authority to approve changes in scope and costs such that the overall Iter schedule can be maintained (see Section 3.5.2.). In addition, the Iter Legal Entity must have the authority to obtain additional funding from the Iter Parties to maintain the Iter Project

contingency fund, and to fund unplanned expenditures, under defined sharing arrangements set out in the Joint Implementation Agreement.

This Section of the Plan will go into additional detail on items within the Joint Implementation Agreement that Iter Canada anticipates could be considered different for the siting of Iter in Canada, compared with the “generic” approach being taken during the Exploration discussions. These are presented in the following Sub-Sections.

### **3.4 THE ITER LEGAL ENTITY IN CANADA**

The Iter Legal Entity, as an international organization, will have the overall responsibility for the design, construction, commissioning, operation, management, and deactivation of the Iter project. The Iter Legal Entity will be established pursuant to the Joint Implementation Agreement.

In Canada, Iter Canada believes the best solution is to establish the Iter Legal Entity as a new international organization created by the Joint Implementation Agreement.

The key considerations for choosing an international organization were to ensure the following could be achieved in Canada:

- Licensing of Iter at Clarington;
- Privileges and Immunities requirements; and
- Financial requirements.

Iter Canada’s analysis shows that all of these conditions could be met with an international organization, realizing as well the preference for an international organization by the current Iter Parties.

The members of the international organization, after the implementation of the Joint Implementation Agreement, would be the signatory Iter Parties, ie. the sovereign states. Each of them, by reason of membership, would have the ability to nominate and have elected one or more directors.

At the end of the Iter project Operating Phase, there is the anticipated five year Deactivation Phase. The members of the Iter Legal Entity would remain the same during this Deactivation Phase. However, for the Decommissioning Phase, after the five year Deactivation Phase, it is anticipated that the Iter Legal Entity would become a Canadian owned and controlled organization without further participation by any government, with the responsibility for decommissioning, utilizing the segregated decommissioning fund established under the Joint Implementation Agreement for that purpose. There will be a requirement for a final review of the segregated decommissioning fund that would be established by the Iter Legal Entity during the project execution, before the termination of the Joint Implementation Agreement. The size and timing of the establishment of the

decommissioning fund will be a license condition of the Iter Legal Entity from the Canadian nuclear regulator, the Canadian Nuclear Safety Commission (see Section 7 and 9).

If so chosen to be established by the Iter Parties, including the Government of Canada, the Iter Legal Entity in Canada would be designated under the Canadian *Foreign Missions and International Organizations Act*. This assignment would normally impart on an international organization, such as the Iter Legal Entity, exemption from taxes and certain special rights and privileges beneficial to the Iter project in the area of immigration – see Section 3.7. below. This *Act* applies in Canada to an organization that is defined as “any intergovernmental organization of which two or more states are members”. This will give the Iter Legal Entity many of the privileges and immunities set out in Articles II and III of the Convention on the Privileges and Immunities of the United Nations.

Although not the long term solution, Iter Canada has proceeded to incorporate the Iter Legal Entity in Canada as a domestic organization, for the purposes of initiating the licensing process. As described in Section 7 of the Plan, the purpose of proceeding with this step was to allow initiation of the licensing process and associated environmental assessment. Prior to the actual issuance of the license from the Canadian Nuclear Safety Commission, the Iter Legal Entity would be established in its final form – an international organization, and this final organization would be the licensee going forward with the implementation of Iter. This action on the part of Iter Canada will allow the shortest possible timeframe for implementing Iter, with minimal risk of delaying construction. For Iter siting in Canada, the Iter Legal Entity would be the licensee of the Canadian Nuclear Safety Commission.

The incorporation documents, including the Letters Patent, for this “proxy” transitional Iter Legal Entity as a Canadian domestic corporation, to meet this advanced licensing requirement are in Attachment 3-A.

### 3.5 COST/BENEFIT SHARING FOR THE ITER PARTIES

The Joint Implementation Agreement must define the equitable cost sharing between the Parties to the agreement during the construction, operation, de-activation and decommissioning phases of the Iter project.

This Plan by Iter Canada does not specify any requirements for the sharing of the costs and benefits between the non-host other Iter Parties. This Plan is based only on the obligations to be taken by Iter Canada, and the consequential requirements from the other Iter Parties to allow Iter Canada to be able to provide its commitments to the Iter Parties.

While covered in other areas of this Plan, several significant items will be highlighted here, where the Iter Canada Plan may differ significantly from the Iter Explorations discussions.

3.5.1. Non-Transportable (**Non-Common**) **Scope during Construction:** Iter Canada’s Plan includes the scope of work defined in the Technical Section 5 of this

document. We believe that this meets the intent of the scope required by a Host, in terms of supplying the required site, infrastructure and non-transportable scope (ie. the Procurement Packages which are only practical to build with local labour and materials or the local content is a very significant portion of the specific package of work). As defined in the Technical Section 5, Iter Canada's site offers significant benefits to the implementation of the Iter project, one of which is the capability of transporting significantly larger components to the Clarington site than assumed by the Joint Central Team work to date. This will give a quality and schedule benefit to the project, realizing that this ability to assemble larger components in the originating countries has the consequence of narrowing the definition of the non-transportable Host scope by reducing on-site assembly activities.

**3.5.2. Decommissioning Funding:** The establishment of a segregated decommissioning fund or alternative acceptable guaranteed financial facility will be a requirement of the Canadian nuclear regulator through a license condition, as defined in Licensing Section 7. Due to the significant long term liability being taken by Iter Canada, and the benefit to the Iter Parties of not being required to take back any nuclear waste materials to their respective countries, the Iter Canada Plan is based on this decommissioning fund being established by the Iter Legal Entity, funded totally by the non-host Iter Parties and according to the license conditions. For greater clarity this Plan defines decommission costs (and hence funded by the non-host Parties) to include the following:

- Decommissioning costs as defined in the Iter Final Design Report cost estimates,
- Radwaste disposal
- Components and facilities salvage value after dismantling where applicable (eg. materials below "clearance" if clearance is acceptable to the Canadian regulator),
- Non-active parts dismantling and salvage value,
- Site restoration, and
- Financing related costs, if spending is made at a later stage.

**3.5.3. Cash and Contingency Funding of the Iter Legal Entity during Construction:** There will need to be a cash and contingency fund established within the Iter Legal Entity to cover the scope of work during the Construction Phase not allocated to an Iter Party and to cover changes to the project during implementation of the Construction Phase. The magnitude of this fund will need to be established in the Joint Implementation Agreement, as well as a decision process for the release of funds and additional funding from the non-host Iter Parties to maintain the contingency fund.

As the Host will be the entity that will have the greatest negative impact due to external changes, ie. schedule and required design changes to the buildings and infrastructure, this Plan does not include an Iter Canada cash contribution to the Iter Legal Entity during the Construction Phase. However, there is a contribution from

Iter Canada during the Operating Phase, as defined in the Host Services Contract (Section 9.2).

### 3.6 THE HOST SERVICES CONTRACT

As highlighted in Figure 3-1 above, it is required that the Iter Legal Entity have equivalent agreements with all the Iter Parties for the provision of the goods and services to be provided by each of the Iter Parties, during both the Construction Phase and Operating Phase of Iter. As discussed in the Financial Section 9.2.5 of this Plan, there will be a Host Services Contract between Iter Canada Host Inc. and the Iter Legal Entity.

Figure 3.2 below gives the overall framework for the Host Services Contract between the Iter Legal Entity and Iter Canada Host Inc.

**Figure 3.2: The Host Services Contract**





For Iter Canada Host Inc., there will be a requirement for a guarantee from the Iter Parties of the specified financial obligations from the Iter Legal Entity to Iter Canada Host Inc., as described in Section 9. This performance and payment guarantee (Attachment 3-B) would be part of the Joint Implementation Agreement. It is also anticipated that there would be similar requirements between the Iter Legal Entity and the non-host Iter Parties for their respective obligations under the Joint Implementation Agreement.

### **3.7 THE PRIVILEGES AND RIGHTS TO THE ITER LEGAL ENTITY AND ITS PERSONNEL**

Subject to negotiation and Canadian Government approval, the Iter structure proposed would allow for a number of special privileges for both the Iter Legal Entity as an international organization, and for the scientific, technical and managerial personnel seconded to and visiting the Iter Legal Entity from the Iter Parties. These include the following:

#### **3.7.1. Immigration:**

3.7.1.1. **Entry Visas:** Non-Canadian officials of the Iter Legal Entity, and their families, would be admitted to Canada for the purpose of working on the Iter project.

Visiting scientists, and their families, including officials from the Iter Parties attending meetings from time-to-time, would be admitted to Canada for the purpose of participating in Iter activities.

3.7.1.2. **Employment Authorizations – Seconded Professionals:** Employment authorizations would be issued and renewed for foreign Iter endorsed professionals working on the project during the term of their secondment to Canada. This would be done according to the provisions of the Regulations to the Canadian *Immigration Act*.

3.7.1.3. **Employment Authorizations – Spouses of Seconded Professionals:** Employment authorizations could be issued and renewed for the spouses of foreign seconded professionals to Iter, to enable them to work in Canada during the period of their spouse's appointment to Iter in Canada.

3.7.1.4. **Student Visas – Children of Seconded Professionals:** Dependent children of seconded professionals to Iter would be granted student visas to enable them to study in Canada.

3.7.1.5. **Qualifications for Immigration Privileges:** Qualification for the privileges described in this Section 3.7.1. are subject to applicable measures relating to public health, safety and national security.

### 3.7.2. **Taxation:**

The taxation of the Iter Legal Entity and the manner in which various seconded professionals would be taxed is an important issue to the success of the project. As noted in Section 3.4 above, it is anticipated that the Government of Canada would designate the Iter Legal Entity in Canada under the provisions of Canada's *Foreign Missions and International Organizations Act*, and this would normally give the following benefits.

- 3.7.2.1. **Iter Legal Entity Tax Status:** The Iter Legal Entity would be exempt from direct taxation on all assets, income and property owned or occupied in Canada. This would apply to both Federal, Ontario Provincial, Regional and Municipal taxation. It should be noted, however, that the Iter Legal Entity would be expected to provide the local municipality of Clarington a contribution in lieu of taxes related to services provided.
- 3.7.2.2. **Import Duties and Excise Taxes:** The Iter Legal Entity would be exempt from or eligible for remission on all customs duties and excise taxes on the import of articles and equipment brought to Canada for use in the Iter project.
- 3.7.2.3. **Goods and Services Taxes (GST):** The Iter Legal Entity would be exempt from or eligible for remission on all Goods and Services taxes on all property and services acquired by the Iter Legal Entity in Canada for use in the Iter project.
- 3.7.2.4. **Provincial Sales Taxes:** The Iter Legal Entity would be exempt from or eligible for remission on all Ontario Provincial retail sales taxes on all goods and services purchased or brought into Ontario by the Iter Legal Entity for use in the Iter project.
- 3.7.2.5. **Land Transfer Tax:** No land transfer tax would be payable on real property acquired by the Iter Legal Entity for use in the Iter project.
- 3.7.2.6. **Seconded Professionals Income Taxation:** Professionals seconded to the Iter project from foreign Iter Parties would be exempt from direct tax on their employment earnings in Canada, being subject only to the taxation laws of their countries of origin.
- 3.7.2.7. **Seconded Professionals Other Taxation:** Professionals seconded to the Iter project from foreign Iter Parties would be exempt from customs duties or charges normally applicable to household effects temporarily brought to Canada, provided that these articles imported are not sold in Canada.

### 3.7.3. Other Benefits:

- 3.7.3.1. **Health Insurance:** Seconded Professionals, together with their immediate family members including children up to 19 years of age, would be eligible for Ontario Health Insurance coverage 90 days after taking up residence in Ontario. In the interim 90 day period, private health coverage would be available.

Note that these items described above are special benefits accorded to the Iter Legal Entity and the seconded professionals. These are in addition to the Socio-Economic advantages to the Iter project and its seconded personnel described in Section 8 “Socio-Economic Benefits Package”.

## 3.8 RISK MANAGEMENT AND INSURANCE

The Iter project is a large long term project with many participants, and as such presents some unique and complex risk management issues to provide security for all participants. Iter Canada conducted a broad-based risk analysis to identify key risk issues, quantify their pre-treatment severity, identify appropriate treatments, and finally, to quantify any remaining risks post-treatment. The major risk issues include: Iter Parties defaults on payment or contribution obligations; contractor/sub-contractor default; late completion or schedule changes; and operational difficulties.

There are many alternative methods of risk financing, transfer and/or management. The following reviews various solutions for the management/transferring of Iter risks to the traditional and non-traditional insurance market, based on the risk analysis.

The Iter Canada recommended method of managing Iter’s risk and insurance complexities is through a coordinated and comprehensive approach traditionally known as an “owner controlled program”. This would include the employment of various risk control techniques and loss prevention programs. For the purposes of this section, both the Iter Legal Entity and Iter Canada Host Inc. are considered the “Owner” because both entities have an insurable interest in the project siting at Clarington.

Management and control of the Owners total cost of risk require implementation of a comprehensive and ongoing risk control and loss prevention program before the beginning of construction, during construction and during the operational life of the project. Loss prevention programs and risk control techniques need to be employed to complement and support the insurance program and manage the Owner’s retained risks.

Iter Canada recommends that the Iter Parties take this consolidated approach to insurance and risk management, and therefore, Iter Canada proposes that a special seminar be held with the negotiating team on the overall issue of risk management and approaches to insurance solutions. The sharing of costs associated with the various items deemed necessary will be subject to negotiation.

The various forms of risk and their mitigation are summarized below, many of which will be incorporated into the final Iter Canada bid terms:

- 3.8.1. **Political Risk Insurance:** Failure of the sovereign Iter Parties to provide necessary goods, services and funding is a major risk, albeit likely a low probabilities risk. To the extent project financing has certain requirements, the Owner purchasing Political Risk Insurance (in combination with the other insurances below) will be a key requirement of the lenders. The principle risks needing to be covered would include loss of funding at any stage of the project due to a sovereign government refusal to transfer funds, blocking of the import of goods or technology to the project due to cancellation of a previously obtained export license, and imposition of any law, order, decree, regulation or restriction by any government applied selectively thereby rendering continued operation economically unviable for a continuous period of time.
- 3.8.2. **Builders Risk - Physical Damage:** Insures the risks of accidental loss and damage to the project during construction against “All Risks” physical perils (e.g. fire, explosion, storms, earthquake, machinery & equipment breakdown, start up, and cold and hot testing, etc). The policy would also insure plant equipment and materials during inland transit and storage. Upon acceptance of the project by the Owner the policy would convert from a construction to operational program, dependant on the final structure of the insurance program.
- 3.8.3. **Builders Risk - Delay in Start-Up:** Provides indemnity to the Owner for revenue losses and expenses due to late completion that results from loss or damage to the project of the type insured against under the Builders Risk – Physical Damage coverage perils. Coverage would be extended to cover delays due to an insured loss at a supplier location, during the time of equipment manufacture and transportation to the job site, or whilst in temporary storage. Upon acceptance of the project by the Owner the policy would convert to operational business interruption coverages such as Loss of Profits or Earnings, over a measured period of time related to loss expectancy.
- 3.8.4. **Marine Cargo - Physical Damage:** Insures materials and equipment used in the construction of the project should they be lost or damaged during ocean transit, and during loading and unloading. Normally suppliers to the project would provide this insurance. The Owner should consider this coverage in order to obtain the following revenue/expense stream protection.
- 3.8.5. **Marine Cargo – Advanced Loss of Profits:** Provides the Owner indemnity for revenue losses and expenses due to late completion of the project that occurs as a result of an ocean transit accident, or during the process of loading or unloading.
- 3.8.6. **Surety Bonds:** Bonds will protect the Owner against financial loss resulting from the failure or default of construction subcontractors. There are three basic types of

bonds. Bid Bonds guarantees the bidder actually will enter the contract at the agreed price and confirms their ability to provide the required performance and payment bonds. Performance bond guarantees the fulfillment of contractual terms between the Owner and the subcontractor. A Labour and Material bond guarantees that the subcontractors, equipment and material suppliers will be paid for work performed. Bonds are generally purchased for a percentage.

- 3.8.7. **Professional Errors & Omissions Legal Liability:** This policy provides a meaningful source of funds for the Owner to claim against in the event of a professional error (design, material or construction) caused by negligence of a professional service firm arising from acts, errors and omissions in relation to professional services rendered. A stand alone project specific policy could be arranged to ensure no erosion of insurance limits occurs as could be the case when dependent on consultants' practice policies. Alternatively, a complementary approach would be to arrange an Owner' Excess Professional Liability policy, which would afford valuable coverage and additional limits of insurance protecting the Owner's interest on a first party basis, after the underlying consultants' practice policies have been exhausted.
- 3.8.8. **Wrap-Up Liability:** Project specific third party liability insurance that protects all of the project participants for their legal liability and defense costs in event of bodily injury or property damage and resultant loss of use caused to a third party claimant. Coverage for limited pollution exposures can be added as an extension.
- 3.8.9. **Marine Liability:** Loading and unloading operations at marine terminals or docks presents some unique liability exposures. These risks are not normally covered under a conventional third party liability policy; this creates the need to purchase specific marine liability coverage, otherwise known as a protection and indemnity policy.
- 3.8.10. **Automobile Physical Damage & Liability:** The Owners are required by law to insure against third party legal liability arising from the use or ownership of an owned or leased vehicle. The policy also covers physical damage to the owned and leased vehicle.
- 3.8.11. **Non-Owned Aircraft:** Insures the project and the Owner against third party legal liability arising from the charter of aircraft in connection with the construction works.
- 3.8.12. **Pollution Legal Liability:** This is a more specific and broader form of coverage that would protect the Owner against third party legal liability, including cleanup cost. First party (Iter) coverage is also available to insure against the financial burden of clean up costs.
- 3.8.13. **Excess Umbrella Liability:** Limits of insurance afforded under primary third party legal liability policies, (e.g. Wrap-up liability, Automobile liability, Non-Owned

Aircraft liability and Pollution Legal liability) are unlikely to be sufficient for this project. An excess umbrella policy provides for additional limits of insurance to protect the Owner against catastrophic losses.

- 3.8.14. **Directors and Officers Professional Liability:** Provides protection for the Directors & Officers of the corporation against claims made against them in their capacity as professional managers.
- 3.8.15. **Crime & Fidelity:** Protects the Owner against theft of money or securities caused by an employee. The scope can be extended to include broader coverage such as inside and outside hold up and depositors' forgery risks.
- 3.8.16. **Employment Practices Liability:** Protects the Owner from employee based lawsuits ie: wrongful dismissal, sexual harassment.
- 3.8.17. **Workers' Compensation and Employer's Liability:** Workers' Compensation covers employee's injuries suffered within the scope of their employment and is designed to pay medical bills and reimburse employees for lost wages. Employer's Liability coverage protects the Owner against legal liability to employees not covered by Workers' Compensation. Workers' Compensation is purchased from the Provincial Government or alternatively self funded. If self funded, the Provincial government may require the Owner to post a financial guarantee sufficient to cover actuarial liabilities. Certain loss control services will be made available to augment site safety and target a desirable zero injury expectation.
- 3.8.18. **Remediation Cost Cap (Decommissioning)/Environmental Finite Risk:**

A Remediation Cost Cap policy indemnifies the Owner for cleanup costs that are above the anticipated cost of clean up. Coverage is provided for cleanup cost at, adjacent to or emanating from the defined site location. The policy applies above the expected cleanup cost (self-insured retention or the funded amount). A Remediation Cost Cap policy can be placed on a stand-alone basis or in combination with an Environmental Finite Risk policy.

Environmental Finite Risk policies are a funding mechanism alternative for the Owner to address known environmental redemption costs and/or third party legal liabilities, providing financial assurance as may be required, for closure/post closure of regulated facilities like Iter. A Finite Risk approach should be considered in conjunction with a Remediation Cost Cap policy.

- 3.8.19. **Force Majeure:** Provides indemnity to the Owner for continued debt service, loss of revenue, expenses, investment income, etc. arising from excusable delays in completion due to a cause beyond the owners', contractors' and subcontractors' control. For example, a change in law or regulation, adverse weather, strikes, labour shortages, political risks, acts of God, unforeseen ground conditions, etc.

This is usually closely tied to the Force Majeure clause within the construction contracts.

3.8.20. **Efficacy/Liquidated Damages:** Protects the contractor/subcontractor against financial loss from an inexcusable delay resulting from liability assumed under contract, (liquidated damages clause) attributable to a failure to perform or performance in an untimely manner. Funds are payable to the owner for late completion and/or performance shortfalls which are caused by the contractors' error. Such errors may relate to engineering design, procurement, construction or commissioning. The differentiation between this and Professional Liability is that Professional Errors and Omission Liability coverage has to be triggered by an implied negligent act, whereas negligence is not a required trigger for liquidated damages insurance.

3.8.21. **Combined Delayed Completion/Force Majeure:** The risk of disputes between the Owner and contractor/subcontractor over whether the cause of the delay was excusable or inexcusable is an issue. The Owner may believe the fault lies with the contractor and contractor/subcontractor may believe they're excused from liability under force majeure provisions. Whatever the cause, the dispute may take considerable time to settle while the Owner is left to service debt. The situation can be eliminated if the Owner purchases a combined force majeure and delayed completion policy in one of these two forms:

- The Owner purchases a combined policy; the insurer agrees to indemnify the Owner for losses from specified delays and assumes subrogation rights against the contractor/subcontractor under the liquidated damage clause.
- An underwriter insures the same perils as above, but agrees to waive rights of subrogation against the contractor/subcontractor enabling the owner to withdraw the assessment of liquidated damages against the contractor/subcontractor under the contract.

3.8.22. **Cost Over-Run:** Provides indemnity for additional expenses excess of the agreed project cost, and which are necessarily incurred in order to complete the project, but all of which are triggered by a circumstance beyond the Owner's control.

### 3.9 THE TRANSITION PERIOD TOWARDS IMPLEMENTATION

The Iter Parties are expected to be establishing the Coordinated Technical Activity to cover the transition between the end of the Iter Engineering Design Activities (EDA) Agreement in July 2001 and the implementation of the project in early 2003.

Iter Canada would like to discuss the option of establishing initially a "third" Joint Work Site in Canada, followed by moving the headquarters for the International Team to Canada, once Clarington becomes the preferred site for Iter.

The initial responsibilities of the Canadian Joint Work Site would be in engineering the site specific details for the buildings; infrastructure; machine assembly; services; utilities; tritium processing integration; remote handling integration; scheduling; project management; procurement; safety, environmental and health; and licensing activities.

### **3.10 ATTACHMENTS**

**3-A: Iter Legal Entity Incorporation Documents (Domestic corporation)**

**3-B: Payment and Performance Guarantee Framework**



**ATTACHMENT 3-A: Iter Legal Entity Incorporation Documents  
(Domestic corporation)**



Industry Canada Industrie Canada

Canada  
Corporations Act

Loi sur les  
corporations canadiennes

C A N A D A

LETTERS PATENT

WHEREAS an application has been filed to incorporate a corporation under the name

THE ITER INTERNATIONAL FUSION ENERGY INSTITUTE

THEREFORE the Minister of Industry by virtue of the powers vested in him by the *Canada Corporations Act*, constitutes the applicants and such persons as may hereafter become members in the corporation hereby created, a body corporate and politic in accordance with the provisions of the said Act. A copy of the said application is attached hereto and forms part hereof.

Date of Letters Patent - March 21, 2001.

GIVEN under the seal of office of the Minister of Industry.

for the Minister of Industry

File Number: 387671-3



**APPLICATION FOR INCORPORATION OF A CORPORATION WITHOUT  
SHARE CAPITAL UNDER PART II OF THE *CANADA CORPORATIONS ACT***

**I**

The undersigned hereby apply to the Minister of Industry for the grant of a charter by letters patent under the provisions of Part II of the *Canada Corporations Act* constituting the undersigned, and such others as may become members of the Corporation thereby created, a body corporate and politic under the name of

**The Iter International Fusion Energy Institute**

The undersigned have satisfied themselves and are assured that the proposed name under which incorporation is sought is not the same or similar to the name under which any other company, society, association or firm, in existence is carrying on business in Canada or is incorporated under the laws of Canada or any province thereof or so nearly resembles the same as to be calculated to deceive except that of Iter Canada Fusion Energy which has signified its consent to the use of the said name and that it is not a name which is otherwise on public grounds objectionable.

**II**

The applicants are individuals of the full age of eighteen years with power under law to contract. The name, the address and the occupation of each of the applicants are as follows:

Name	Address	Occupation
Peter Robert Barnard	35 Crescent Road Toronto ON M4W 1T4	Executive
Donald Peter Dautovich	#815 - 2111 Lakeshore Blvd. West Toronto ON M8V 4B2	Executive
Murray John Stewart	18 Hollywood Avenue, PH103 Toronto ON M2N 6P5	Executive

The said Peter Robert Barnard, Donald Peter Dautovich and Murray John Stewart will be the first directors of the Corporation.

**III**

The objects of the Corporation are:

- (a) to design, construct, own, operate, manage and decommission Iter, a nuclear fusion facility to demonstrate the scientific and technological feasibility of fusion energy for peaceful purposes;

- (b) to co-operate with Iter Parties in the demonstration of fusion as a safe, sustainable, cost-efficient and environmentally sound energy source;
- (c) to co-operate with Iter Parties in the sharing and dissemination of the knowledge gained from the Iter project;
- (d) to utilize prior fusion energy research and development work carried out by the Iter Parties and others;
- (e) to assist in the dissemination of information to the public about fusion energy and operation of the research and development facility;
- (f) to ensure and accelerate technology benefits beyond fusion energy.

#### IV

The operations of the Corporation may be carried on throughout Canada and elsewhere.

#### V

The place within Canada where the head office of the Corporation is to be situated is the Municipality of Clarington, in the Regional Municipality of Durham, in the Province of Ontario:

#### VI

It is specially provided that in the event of dissolution or winding-up of the Corporation, all its remaining assets after payment of its liabilities shall be distributed to one or more organizations carrying on similar activities.

#### VII

In accordance with Section 65 of the *Canada Corporations Act*, it is provided that, when authorized by by-law, duly passed by the directors and sanctioned by at least two-thirds of the votes cast at a special general meeting of the members duly called for considering the by-law, the directors of the Corporation may from time to time:

- (a) borrow money upon the credit of the Corporation;
- (b) limit or increase the amount to be borrowed;
- (c) issue or cause to be issued bonds, debentures or other securities of the Corporation and pledge or sell the same for such sums, upon such terms, covenants and conditions and at such prices as may be deemed expedient;
- (d) secure any bond, debentures, or other securities, or any other present or future borrowing or liability of the Corporation, by mortgage, hypothec, charge or pledge of all or any currently owned or subsequently acquired

real and personal, movable and immovable, property of the Corporation, and the undertaking and rights of the Corporation.

Any such by-law may provide for the delegation of such powers by the directors to such officers or directors of the Corporation to such extent and in such manner as may be set out in the by-law.

Nothing herein limits or restricts the borrowing of money by the Corporation on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the Corporation.

### VIII

The by-laws of the Corporation shall be those filed with the application for letters patent until repealed, amended, altered or added to.

### IX

The Corporation is to carry on its operations without pecuniary gain to its members and any profits or other accretions to the Corporation are to be used in promoting its objects.

DATED the                      day of                      , 2000.

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Peter Robert Barnard

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Donald Peter Dautovich

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Murray John Stewart

### **ATTACHMENT 3-B**

#### **FRAMEWORK OF GUARANTEE OF NON-HOST ITER PARTIES IN FAVOUR OF ITER CANADA IN RESPECT OF THE OBLIGATIONS OF ITER LEGAL ENTITY (Sovereign Guarantee)**

- Each of the non-host Iter Parties will unconditionally and irrevocably guarantee to Iter Canada (including Iter Canada Host Inc.), each as to its undivided percentage interest in Iter, payment on demand of all liabilities owing by Iter Legal Entity to Iter Canada arising from agreements, undertakings, contracts and arrangements from time to time entered into between Iter Legal Entity and Iter Canada, including, but not limited to (1) the obligations of the Iter Legal Entity pursuant to the Host Services Contract to be entered into between Iter Legal Entity and Iter Canada Host Inc.; (2) decommissioning costs; and (3) project or schedule changes not under the control of Iter Canada.
- The Guarantee of each of the Iter Legal Parties shall continue without release for the full term of Iter whether or not an Iter Party withdraws from Iter.
- Each of the non-host Iter Parties represents and warrants in the Guarantee that it does not have any right of immunity from legal proceedings or execution of judgement in the courts of the Province of Ontario and of Canada on the grounds of sovereignty and the execution and delivery of the Guarantee and the performance of the obligations thereunder constitute commercial acts in furtherance of a commercial purpose.
- The Guarantee will be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada as applicable and each of the Iter Parties will consent and submit to the irrevocable and non-exclusive jurisdiction of the courts of the Province of Ontario in respect of any action, proceeding or claim arising in respect of the Guarantee.
- Each of the non-host Iter Parties will waive any immunity it might have in respect of the jurisdiction of the courts of the Province of Ontario and Canada from attachment and execution against any of its assets or property whatsoever or wheresoever located.
- Each of the non-host Iter Parties consents to relief orders or judgements of the courts of the Province of Ontario which may be given in any proceedings relating to the Guarantee and are to be recognized and enforceable in the jurisdiction of each of the Iter Parties.
- The Guarantee will include waivers of defences and permit amendments to the underlying obligations guaranteed without affecting the enforceability of the Guarantee.