



The Iter Institute
1 Yonge Street, Suite 2001
Toronto, Canada M5E 1E5

ITER Institute Letter of Intent to the CNSC

Attachment 5

Legal Entity Description

Contents

- 5.1 Introduction**
- 5.2 The Structure of Iter with Canada as Host**
- 5.3 The Joint Implementation Agreement**
- 5.4 The Iter Legal Entity in Canada**
- 5.5 Operational Control of the Facility and Associated Activities**
- 5.6 Technical Competence**
- 5.7 Financial Responsibility**
- 5.8 Safety**
- 5.9 Conclusion**

5.1 INTRODUCTION

The Iter Project will be established by an international, treaty level agreement (Iter “Joint Implementation Agreement”), with the European Union, the Russian Federation, Japan and Canada being the initial signatories (“Iter Parties”).

The establishment of an appropriate international agreement, which will allow the current Iter Parties who have participated in the design phase of Iter to meet all of their scientific, technical, financial and socio-economic goals, while protecting the interests of the Canadian host entity, is critical to the successful implementation of Iter.

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 and the supporting technical support (“Coordinated Technical Activities”) arrangements. This will become the basis for the negotiation process leading to the final Iter Joint Implementation Agreement.

As this Letter-of-Intent is being submitted to the Canadian Nuclear Safety Commission (CNSC), the formal submission for Iter being hosted at the Clarington site is being finalized for negotiation with the Iter Parties, which is expected to lead to a decision in late 2002 to formally select a site and proceed with the project.

5.2 THE STRUCTURE OF ITER WITH CANADA AS HOST

The proposed structure for the Iter project sited in Canada is shown in Figure 5-1 on the next page. This structure has been developed in consideration of the requirements of the current Iter Parties, and also to give the current and any future Iter Parties the greatest possible organizational flexibility, while assuring a high level of quality assurance and safety, over the full life of the project.

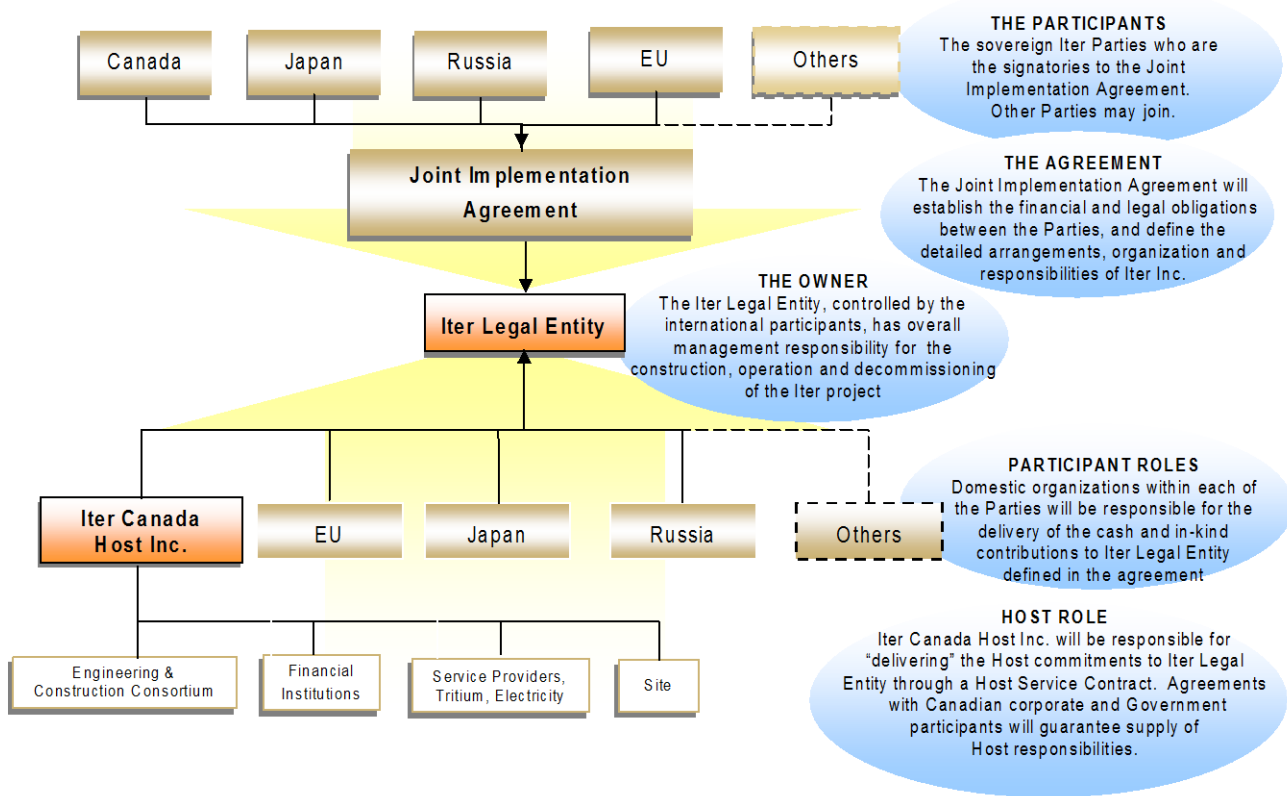
As noted in Figure 5-1 the following are the key elements of this structure:

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

We believe that there is an advantage to the Iter project for inclusion of additional Participants, hence additional participation is shown in the organization chart.

- **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 5.3 below describes this in more detail.

Figure 5-1: The Iter Structure in Canada, following approval of the Joint Implementation Agreement



The “Owner” of Iter will be the Iter Legal Entity, an international organization established by the Joint Implementation Agreement. This is described more fully in Section 5.4 below, including a transition period Canadian domestic organization (“The Iter International Fusion Energy Institute”) 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.

Host Role: Figure 5-1 gives additional detail of the Host responsibilities. For Canada, many of these obligations would be delivered under a Host Services Contract with the Iter Legal Entity. Iter Canada Host Inc. will be a Canadian domestic corporation that will be responsible for the Host Services Contract.

5.3 THE JOINT IMPLEMENTATION AGREEMENT

The framework of the Joint Implementation Agreement has been developed by the Iter Parties and will include as a minimum the following provisions:

- Opening provisions
- Institutional structure of the project (Iter Legal Entity, Council, Director, etc.) (See Section 5.4 below)
- Legal personality, establishment and management structure of the Iter Legal Entity
- Cost/Benefits sharing during construction, operation, exploitation and decommissioning (See Section 5.5 and 5.6 below)
- Budget and Accounting
- Staffing
- Procurement scheme (See Sections 5.5 and 5.6 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 Decision Process and Procedures will define the processes and procedures both between the Iter Parties and within the Iter Legal Entity. This will result in a well defined delegation of decision making 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 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.

5.4 THE ITER LEGAL ENTITY IN CANADA

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

The members of this international organization, after the implementation of the Joint Implementation Agreement, would be the signatory Iter Parties, i.e. the sovereign states of Japan, the Russian Federation, the European Union and Canada. Each of these, 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 an anticipated six 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 six 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 decommissioning fund established under the Joint Implementation Agreement for that purpose.

Although not considered in the long term plan presented above, the Iter Legal Entity has now been incorporated in Canada as a domestic organization (“Iter International Fusion Energy Institute”, referred to as the Iter Institute), for the purposes of initiating the licensing process. However, prior to the actual issuance of the license from the CNSC, the Iter Legal Entity would be established in its final form – an international organization, and this final organization would be going forward with the licensing and implementation of Iter. This action to establish the Iter Institute will allow the earliest possible engagement of the CNSC and the benefits of the environmental assessment process to be included in the planning process for Iter in Canada.

The incorporation documents for the transitional Iter Legal Entity, the Iter Institute, as a Canadian domestic corporation, are in Attachment 5-A.

For purpose of the following description, “the Iter Institute” will refer to the Iter Legal Entity in both its initial domestic and subsequent international organization forms, unless a statement is specifically attributed to one organizational form.

5.5 OPERATIONAL CONTROL OF THE FACILITY AND ASSOCIATED ACTIVITIES

The eventual Iter Legal Entity, established as an international organization, will become legally responsible for, and have management control of, the proposed fusion facility in Canada. The head office will be in Canada and essentially all operations will be carried out in Canada.

Operational management staff of the facility will be resident in Canada at the facility. As noted above, this organization will be responsible in Canada for the design, construction, management and operation of the facility. It will be responsible for the hiring of staff and the control of the site. It will also be responsible for the safe operation of the facility in accordance with Canadian legal requirements.

5.6 TECHNICAL COMPETENCE

The Iter Institute recognizes that acquisition and maintenance of technical competence of a high order is necessary for the safe management of a Class I Nuclear Facility. The Iter Institute will have the power of access to the largest and most up-to-date body of technology on magnetic confinement fusion that exists in the world today. This technology is resident in the members and the regulatory bodies of the signatory Parties. The technology represents not only technical data, but also the design, construction, and operating experience of the staff of members, safety management experience of the staff of members, and licensing experience of the regulatory organizations of Parties. Commitments of continued access to this technical competence will be an essential element of the legal foundation of the Iter Institute and the provisions of the Joint Implementation Agreement will support access to this technology.

The Iter Institute also recognizes that the highest quality of design, construction and operation can only be achieved with modern management techniques. It will have the power to establish modern quality control procedures in all stages of its activities including management of technical operations.

It should be noted that during 2001 and 2002 when the domestic organization is active, the Iter Parties will have implemented a continuing technology support arrangement called the Coordinated Technical Activities (CTA). This will continue the technical development and coordination of the Iter technology and design from the existing Iter design team arrangement (the Joint Central Team). It will ensure the appropriate hand-over of technical capability during the next two years, and will also be the mechanism for transferring the same capability to the international organization that will be established by the Joint Implementation Agreement.

5.7 FINANCIAL RESPONSIBILITY

The Iter Institute will have the power to arrange for clearly defined and legally enforceable financial guarantees at arm's length to pay for the decommissioning of the facility. It will have the resources of its members as well as the assurances within the Joint Implementation Agreement to draw upon to arrange these guarantees. The financial guarantees will be effectively resident in Canada and acceptable to the CNSC.

5.8 SAFETY

The Iter Institute will have the legal power to safely manage the Class I Nuclear Facility and all radioactive materials on the site.

The Iter Institute, with which the CNSC will deal with, will have the power to ensure that it has full access to all technical information available from its members relevant to the safety of the facility and the management of radioactive products arising from the operation of the facility. This access will be assured through the Joint Implementation Agreement and any contractual arrangements necessary.

The Iter Institute recognizes that the facility will be close to the Darlington Nuclear Generating Station and makes a commitment to co-operate with OPG to ensure that the safety of the Darlington Nuclear Generating Station is not compromised in any way through the building and operation of the fusion facility. Discussions on co-operation with Ontario Power Generation are underway. The Iter Institute will have the legal power to ensure the full integration of activities under its control at the fusion facility with the activities at Darlington to ensure the requirements for protection of the public continue to be met.

The Iter Institute will have the power to ensure that the experimental program of the facility is always subservient to the safe operation of the facility. It will also have the power to establish a management structure that will ensure the demands of the experimental program are always within the established licensing conditions.

5.9 CONCLUSION

The structure and plan described above will allow the Iter Institute to fulfill all the responsibilities that will arise from the application to obtain a Class I Nuclear Facility license to operate a fusion facility in Canada.

**ATTACHMENT 5-A: Iter Legal Entity Incorporation Documents
(Domestic corporation)**

**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.

Peter Robert Barnard

Donald Peter Dautovich

Murray John Stewart

CANADA

PROVINCE OF ●

IN THE MATTER OF the application of ● and others for incorporation under Part II of the *Canada Corporations Act* under the name of ●

AFFIDAVIT:

I, ●, of the City of ● in the Province of ●, make oath and say as follows:

- (a) I am one of the applicants herein.
- (b) I have knowledge of the matter, and that the statements in the annexed application contained are, to the best of my knowledge and belief, true in substance and in fact.
- (c) I am informed and believe that each applicant signing the said application is of the full age of eighteen years and has power under law to contract and that his or her name and description have been accurately set out in the preamble thereto.
- (d) The proposed corporate name of the company is not on any public grounds objectionable and that it is not that of any known company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.
- (e) I have satisfied myself and am assured that no public or private interest will be prejudicially affected by the incorporation of the company aforesaid.

SWORN BEFORE ME at the City of Toronto, in the County/Region of ●, on ●.

Commissioner for Taking Affidavits

Name