

## **Comparative Study of the Existing National Legislation on Deep Seabed Mining**

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*\*The information contained in this study does not imply the expression of any opinion or interpretation whatsoever on the part of the Secretariat of the International Seabed Authority concerning the elements of the national legislation reflected herein.*

## INTRODUCTION

1. At the twenty-third session of the International Seabed Authority (“the Authority”) in 2017, the Assembly of the Authority adopted a decision relating to the final report on the first periodic review of the international regime of the Area pursuant to article 154 of the United Nations Convention on the Law of the Sea (“the Convention”). As part of that decision the Assembly invited States parties sponsoring activities in the Area, if they had not already done so, to review their respective national legislation to control activities by entities with whom they had entered into contracts for exploration, drawing on the advisory opinion of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea (“the Chamber”).<sup>1</sup> Additionally, the Assembly requested the Secretary-General to provide the Council with a comparative study of the existing national legislation with a view to deriving common elements therefrom.<sup>2</sup>

2. Such comparative study, the subject of this present report by the Secretary-General, focuses on the existing national legislation with respect to deep seabed mining, and mainly legislation adopted after the entry into force of the Convention.

3. Article 153, paragraph 2, of the Convention describes the “parallel system” of exploration and exploitation activities indicating that such activities should be carried out by the Enterprise, and, in association with the Authority, by States Parties or state enterprises or natural or juridical persons. It further states that, in order to be eligible to carry out such activities, natural and juridical persons must satisfy two requirements. First, they must be either nationals of a State Party or effectively controlled by it or its nationals. Second, they must be “sponsored by such States”. Article 153, paragraph 2(b), of the Convention makes the requirement of sponsorship applicable also to state enterprises. However, States Parties engaged in deep seabed mining under the Convention are directly bound by the obligations set out therein, and consequently, there is no need to apply to them the requirement of sponsorship. The purpose of requiring the sponsorship of applicants for contracts for the exploration and exploitation of the resources of the Area is to achieve the result that the obligations set out in the Convention, a treaty under international law which binds only States Parties thereto, are complied with by entities that are subjects of domestic legal systems. This result is obtained through the provisions of the Authority’s Regulations that apply to such entities and through the implementation by the sponsoring States of their obligations under the Convention and related instruments.

4. Under Article 139 of the Convention, States Parties shall have the responsibility to ensure that activities in the Area, whether carried out by States Parties, or state enterprises or natural or juridical persons shall be carried out in conformity with Part XI.

5. In response to a request by the Council of the Authority, on 1 February 2011, the Seabed Disputes Chamber of the International Tribunal on the Law of the Sea unanimously adopted its advisory opinion on the responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area.<sup>3</sup> The Chamber outlined the responsibilities and obligations of States that sponsor activities in the Area and the extent of the sponsoring State’s liability.

6. The Chamber reaffirmed that, the Convention requires the sponsoring State to adopt, within its legal system, laws and regulations and to take administrative measures that have two distinct functions, namely, to ensure compliance by the contractor with its obligations and to exempt the sponsoring State from liability. The Chamber found that ‘responsibility to ensure’ in article 139, paragraph 1 and Annex III, article 4, paragraph 4, of the Convention points to an obligation of the sponsoring State under international law. It establishes a mechanism through which the rules of the Convention concerning activities in the Area,

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<sup>1</sup> ISBA/23/A/13, sect. B.

<sup>2</sup> ISBA/23/A/13, Section E, paragraph 3.

<sup>3</sup> *Responsibilities and obligations of States with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p.10.

although being treaty law and thus binding only on States Parties, become effective for sponsored contractors which find their legal basis in domestic law. This mechanism consists in the creation of obligations which States Parties must fulfil by exercising their power over entities of their nationality and under their control.

7. The sponsoring State's obligation "to ensure" is not an obligation to achieve, in each and every case, the result that the sponsored contractor complies with their obligations. Rather, it is an obligation to deploy adequate means, to exercise best possible efforts, to do the utmost, to obtain this result.<sup>4</sup> The Chamber concluded that it is an obligation of "due diligence", that sponsoring States should make 'best possible efforts' in taking 'reasonably appropriate' measures, which must consist of laws, regulations and administrative measures. The existence of such laws and regulations, and administrative measures is not a condition for concluding the contract with the Authority; it is, however, a necessary requirement for carrying out the obligation of due diligence of the sponsoring State for seeking exemption from liability. This exemption from liability does not apply to the failure of the sponsoring State to carry out its direct obligations, as identified by the Chamber, which include: the obligation to assist the Authority set out in article 153, paragraph 4, of the Convention, the obligation to apply a precautionary approach, the obligation to apply the "best environmental practices", the obligation to adopt measures to ensure the provision of guarantees in the event of an emergency order by the Authority for protection of the marine environment, and the obligation to provide recourse for compensation. Furthermore, the sponsoring State is under a due diligence obligation to ensure compliance by the sponsored contractor with its obligation to conduct an environmental impact assessment.<sup>5</sup> The Chamber also highlighted that the "content of "due diligence" obligations may not easily be described in precise terms. Among the factors that make such a description difficult is the fact that "due diligence" is a variable concept. It may change over time as measures considered sufficiently diligent at a certain moment may become not diligent enough in light, for instance, of new scientific or technological knowledge. It may also change in relation to the risks involved in the activity."<sup>6</sup>

8. According to the advisory opinion, the scope and extent of these laws and regulations and administrative measures depends on the legal system of the sponsoring State. However, the Chamber held that, the sponsoring State does not have absolute discretion with respect to the adoption of laws and regulations and the taking of administrative measures. It must act in good faith, taking the various options into account in a manner that is reasonable, relevant and conducive to the benefit of mankind as a whole. Such laws and regulations and administrative measures may include the establishment of enforcement mechanisms for active supervision of the activities of the sponsored contractor and for co-operation between the activities of the sponsoring State and those of the Authority. The provisions that the sponsoring State *may* find necessary to include in its national laws relate, *inter alia*, to financial viability and technical capacity of sponsored contractors, conditions for issuing a certificate of sponsorship and penalties for non-compliance by such contractors. It is inherent in the "due diligence" obligation of the sponsoring State to ensure that the obligations of a sponsored contractor are made enforceable. As regards the protection of the marine environment, the laws and regulations and administrative measures of the sponsoring State cannot be less stringent than those adopted by the Authority or less effective than international rules, regulations and procedures.<sup>7</sup> The establishment of a trust fund to cover the damage not covered under the Convention could be considered.<sup>8</sup>

#### *Status of national legislation*

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<sup>4</sup> Paragraph 110, *Responsibilities and obligations of States with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p.10.

<sup>5</sup> Paragraph 242 (*Replies to Question 1 submitted by the Council*), *Ibid.*

<sup>6</sup> Paragraph 117, *Ibid.*

<sup>7</sup> Paragraph 242 (*Replies to Question 3 submitted by the Council*), *Ibid.*

<sup>8</sup> Paragraph 242 (*Replies to Question 2 submitted by the Council*), *Ibid.*

9. In 2011, after considering the advisory opinion, the Council of the Authority requested the Secretary-General to prepare a report on the laws, regulations and administrative measures adopted by sponsoring States and other members of the Authority with respect to the activities in the Area, and invited sponsoring States and other members of the Authority, as appropriate, to provide information on or the texts of relevant national laws, regulations and administrative measures to the secretariat.<sup>9</sup> In 2012, the Council made the matter a standing item on its agenda and requested the Secretary-General to prepare an updated report annually for consideration by the Council. These reports should be read in conjunction with this study.<sup>10</sup> In addition, the secretariat established an online database of national legislation submitted by members and observers of the Authority.<sup>11</sup>

10. As at 5 June 2018, a total of 31 States had provided information on or the texts of relevant national legislation, namely: Belgium, Brazil, China, Cook Islands, Cuba, Czechia, Dominican Republic, Fiji, France, Georgia, Germany, Guyana, India, Japan, Kiribati, Mexico, Montenegro, Nauru, Netherlands, New Zealand, Nigeria, Niue, Oman, Republic of Korea, Russian Federation, Singapore, Tonga, Tuvalu, United Kingdom of Great Britain and Northern Ireland, United States of America and Zambia. Submissions had also been received from the Pacific Community.<sup>12</sup>

11. According to the information received, Georgia and Guyana do not have such national legislation relating to activities in the Area. The national legislation submitted by Cuba, India, Mexico, Montenegro, Nigeria, Niue, Oman and Zambia deal with mining on land or under its national jurisdiction, maritime zones, and/or marine environmental protection, without directly regulating activities in the Area. Brazil, Cuba, Dominican Republic, Netherlands, Republic of Korea and Russian Federation are in the process of reviewing, amending or adopting their national legislation relating to the activities in the Area. In 2009, the Cook Island adopted its Seabed Minerals Act 2009, which was amended in 2015 by Seabed Minerals (Amendment) Act 2015, and also promulgated its Seabed Minerals (Prospecting and Exploration) Regulations 2015; these instruments regulate the management of the seabed minerals within national jurisdiction of the Cook Islands. Currently the Cook Islands is reviewing the Seabed Minerals Act and Regulations.

12. In line with the timing of their promulgation and against some benchmark events, the legislation may be divided into three “periods”.

13. The first period refers to the legislation adopted in 1980s under the reciprocating States regime (RSR). The first instrument of the RSR was the US Deep Seabed Hard Mineral Resource Act of 1980, providing “an interim procedure for the orderly development of hard mineral resources in the deep seabed pending adoption of an international regime”. The Act provided a scheme for regulation of seabed mining, inter alia forbidding exploration or commercial recovery of minerals unless licensed by the United States or a “reciprocating” State or permitted by an international agreement in force for the United States. It designated a reciprocating State as such if it regulated seabed mining in a manner compatible with the Act, recognized licences issued under the Act and prohibited exploration or commercial production in conflict with that authorized under the Act. Similar legislation was adopted by other States. Germany adopted the Act of Interim Regulation of Deep Seabed Mining 1980 (amended 1982); the United Kingdom adopted the Deep Seabed Mining (Temporary Provisions) Act 1981; France adopted the Law on the Exploration and Exploitation of the Mineral Resources of the Deep Seabed 1981; Japan adopted the Law on Interim Measures for Deep Sea-Bed Mining 1982; and Italy adopted the Regulations on the Exploration and Exploitation of the Mineral Resources of the Deep Sea-bed 1985.

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<sup>9</sup> See paragraph 3, ISBA/17/C/20.

<sup>10</sup> See ISBA/18/C/8 and ISBA/18/C/8/Add.1, ISBA/19/C/12, ISBA/20/C/11 and ISBA/20/C/11/Add.1, ISBA/21/C/7, ISBA/22/C/8 and ISBA/23/C/6 and ISBA/24/C/13.

<sup>11</sup> Available at <https://www.isa.org.jm/national-legislation-database>.

<sup>12</sup> See ISBA/24/C/13.

14. The second period refers to legislation adopted after the entry into force of the Convention and before the issue of the advisory opinion of the Seabed Chamber of the ITLOS, including: Russian Federation Decree of the President No. 2099 of 22 November 1994 on the activities of Russian physical and legal entities related to the exploration and development of the mineral resources of the seabed outside the continental shelf (“Russian Federation Decree of the President”) and Government Decree No. 410 of 25 April 1995 on the procedure of activities of Russian physical and legal entities related to the development of mineral resources of the seabed outside the continental shelf (“Russian Federation Government Decree”), Germany Seabed Mining Act of 6 June 1995, amended by article 74 of the Act of 8 December 2010 (“Germany Act”), New Zealand United Nations Convention on the Law of the Sea Act 1996 (“New Zealand Act”) and Czech Republic Act No. 158/2000 of 18 May 2000 on Prospecting, Exploration for and exploitation of Mineral Resources from the Seabed beyond the limits of National Jurisdiction (“Czech Republic Act”).

15. The third period refers to legislation adopted or amended after the issuance of the Advisory Opinion of the Seabed Chamber of ITLOS in 2011, including Belgium Act on prospecting and exploration for and exploitation of, resources of the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction, adopted on 17 August 2013 (“Belgium Act”), Fiji International Seabed Mineral Management Decree 2013 (“Fiji Decree”), United Kingdom Deep Sea Mining (Temporary Provision) Act 1981, as amended by the Deep Seabed Mining Act 2014, which entered into force on 14 July 2014 (“the United Kingdom Act”), Tonga Seabed Minerals Act 2014 (“Tonga Act”), Tuvalu Seabed Minerals Act 2014 (“Tuvalu Act”), Singapore Deep Seabed Mining Act 2015 (“Singapore Act”), Nauru *International Seabed Minerals Act 2015* (“Nauru Act”), Law of the People’s Republic of China on Exploration for and Exploitation of Resources in the Deep Seabed Area, adopted on 26 February 2016 and effective as from 1 May 2016 (“China Law”), Kiribati *Seabed Mineral Act 2017* (“Kiribati Act”), and France *Ordinance No. 2016-1687 of 8 December 2016 relating to the maritime areas under the sovereignty or jurisdiction of the Republic of France* (“France Ordinance”).

16. This comparative study focuses on the national legislation regulating deep seabed mining in the Area adopted by the following members of the Authority: Belgium, China, Czech Republic, Fiji, France, Germany, Japan, Kiribati, Nauru, New Zealand, Russian Federation, Singapore, Tonga, Tuvalu, and the United Kingdom. It is noted that thirteen of these States are currently sponsoring States (Belgium, China, Cook Islands, Czech Republic, France, Germany, Japan, Kiribati, Nauru, Russian Federation, Singapore, Tonga and United Kingdom). A list of the relevant national legislation is shown at Annex I.

17. It is noted that the deep-sea mineral acts developed by five Pacific, namely, Fiji, Kiribati, Nauru, Tonga and Tuvalu, have benefited from a regional technical assistance project (the European Union-Secretariat of the Pacific Community Deep Sea Minerals Project 2011-2016), and share similar legislative structures and mechanisms.

18. While this study focuses on Area-specific legislation, it is also noted that many States have adopted other legislation that may be of direct relevance in the regulation of activities in the Area and applicable to persons under their jurisdiction, in particular rules relating to marine environmental protection or health and safety of life at sea. Other such primary legislation and any associated regulations are not examined in this study.

19. Furthermore, this analysis has relied upon the review of a number of documents with unofficial translations of the source text. This to, together with differences in legislative drafting styles and structural approaches, may have a bearing on the interpretative approach taken in this study.

## COMMON ELEMENTS

20. This comparative study focuses on the national legislation in relation to activities in the Area adopted by the following member States of the Authority: Belgium, China, Czech Republic, Fiji, France, Germany, Japan, Kiribati, Nauru, New Zealand, Russian Federation, Singapore, Tonga, Tuvalu, and the United Kingdom (see Annex I).

21. Nine States have adopted legislation (Act or Law) that addresses exclusively the legal regime of regulating activities in the Area (Belgium, China, Czech Republic, Fiji, Germany, Japan, Nauru, New Zealand, Russian Federation, Singapore and the United Kingdom). Kiribati, Tonga and Tuvalu regulate, in one Act, seabed mining both within their national jurisdiction and in the Area. France incorporated an article in an ordinance relating more generally to all maritime spaces under its sovereignty or jurisdiction. Most States, in the Act or Law, authorize regulation-making power to competent national authorities (China, Germany, Japan, Singapore and the United Kingdom).

22. Common elements are drawn from article-by-article reading of the relevant legislation including a comparative review of the substantive and procedural issues as provided for in those legislations. The common elements (headings) that can be drawn from such review include the following:

- (a) Purposes and objectives
- (b) General principles
- (c) National competent authorities
- (d) Requirements for prospecting
- (e) Licencing regime for activities in the Area
- (f) Rights, obligations and responsibility/liability of a licensee/sponsored party/contractor
- (g) Role and responsibilities of the sponsoring State
- (h) Monitoring, supervision and inspection
- (i) Marine environmental protection
- (j) Data and information
- (k) Financial arrangements
- (l) Offences and penalties
- (m) Due regard to other users of the marine environment
- (n) Objects of an archaeological or historical nature
- (o) Rights of other States
- (p) Dispute settlement
- (q) Terms and interpretation
- (r) Implementing regulations and guidelines
- (s) Cooperation mechanisms with the Authority

## **I. Purposes and objectives**

23. China, Germany, Singapore, the Czech Republic, Fiji, Kiribati, Nauru, Tonga and Tuvalu contain articles on the purposes or objectives of the legislation. The purposes and objectives include to:

- Regulate exploration and exploitation activities in the Area (China, Singapore) or regulate business activity in deep seabed mining (Japan);
- Ensure protection of marine environment against any harmful effects of the activities in the Area (China, Singapore);
- Promote resources investigation and marine scientific research (China);
- Secure sustainable use or rational development of the deep seabed resources (China, Japan);
- Safeguard the common interest of mankind (China);
- Contribute to the promotion and extension of public welfare (Japan);
- Fulfil obligations under, or ensure compliance with the provisions of, the Convention, the Agreement, rules and regulations of the Authority in relation to activities in the Area (Germany, Singapore);
- Ensure the safety of workers and operational facilities, to take precautions against hazards deriving from prospecting and activities in the Area for life, health or the assets of third parties (Germany);
- Regulate supervision or administrative measures on prospecting and activities in the Area (Czech Republic, Germany);
- Regulate the rights and obligations of persons and entities engaged in prospecting, exploration for and exploitation of mineral resources in the Area (Czech Republic);
- Implement the principles and rules of international law, in particular the principle of the common heritage of mankind (Czech Republic);
- Establish a legal framework for the sponsorship and for the effective control by the sponsoring State of contractors to undertake seabed activities in the Area (Fiji, Kiribati, Nauru, Tonga);
- Ensure activities in the Area are under effective control of the sponsoring State in accordance with best international practice and in a manner consistent with internationally accepted rules, standards, principles and practice (Fiji, Kiribati, Nauru, Tonga and Tuvalu);
- Promote transparency in decision-making on matters concerning management of seabed mineral activities (Kiribati, Nauru, Tonga and Tuvalu);
- Provide a regulatory environment for investors in seabed mineral activities (Kiribati, Nauru, Tonga and Tuvalu);
- Secure optimum benefits, long-term economic growth and sustainable development for the sponsoring State (Kiribati, Nauru, Tonga and Tuvalu); and
- Secure maximize the benefits from seabed mineral activities for present and future generations (Fiji, Kiribati, Nauru, Tonga and Tuvalu)

## **II. General Principles**

24. China, the Czech Republic, Fiji, Kiribati, Nauru, Tonga and Tuvalu provide for a number of general principles under which the activities should be carried out. China, for example provides for the principles of peaceful use, cooperation and sharing, protection of marine environment, and safeguarding the common interest of mankind. Czech Republic, Kiribati, Nauru, Tonga and Tuvalu recognise the principle of the “common heritage of mankind”.



### III. National competent authorities

25. All States designate the Government or a ministry or ministries as the competent authority for decision-making regarding the issue of a licence/certificate of sponsorship (Belgium, China, Czech Republic, Germany, France, New Zealand, Singapore and the United Kingdom). Some refer to a Ministry or a Minister being responsible for administration of the Act (New Zealand, Russian Federation and Singapore) without further specification. Most States designate a specific ministry or Ministries, e.g.

- Ministry responsible for matters related to the economy (Belgium)
- Ministry responsible for oceanic administration (China)
- Ministry of Industry and Trade (Czech Republic)
- State Office for Mining, Energy and Geology (Germany)
- Ministry of Economy, Trade and Industry (Japan)
- Secretary of State (the United Kingdom)

26. Some States have also designated other ministries or entities to assist the competent authority in performing their functions. Belgium designates the Ministry of Environment while Czech Republic refers to the Ministry of Foreign Affairs. China provides that other Ministries shall be responsible for related administration work as prescribed by the State Council (central government). France refers to “competent authority”. Germany designates the Federal Maritime and Hydrographic Agency and Federal Environmental Agency to give comments to the application and designates the Federal Ministry of Economics and Technology to forward the application to the Authority. Japan designates the Central Mine Safety Council to deal with relative matters to ensure safety accompanied by deep seabed mining.

27. Fiji, Kiribati, Nauru, Tonga and Tuvalu have instituted new national authority specifically competent for seabed mining activities (see below) and further elaborate the functions and powers of the national competent authority. The competent authority of Nauru, Kiribati, Tonga and Tuvalu may appoint a Chief Executive Officer and other staff for the implementation of the Act.

- “*Fiji International Seabed Authority*” and “*Nauru Seabed Minerals Authority*” (both are body corporate, consisting of cross-governmental representation drawn from different Ministries or departments)
- “*Kiribati Seabed Minerals Secretariat*”, “*Tonga Seabed Minerals Authority*” and “*Tuvalu Seabed Minerals Authority*” (whose role is to be performed by an existing Ministry, operating through the Ministry’s Secretary, Ministry Personnel or staff).

28. Fiji, Kiribati, and Tuvalu also establish specific advisory bodies (see below). Fiji further established a *Seabed Mineral Resources Corporation* as a government company for the purpose of engaging in partnership or joint venture arrangements to conduct seabed mineral activities.

- *Fiji International Seabed Minerals Working Group* (to provide technical and policy advice and recommendations to the *Fiji International Seabed Authority* in the performance of its functions, consisting of persons appointed by the Minister)
- *Kiribati Seabed Mineral Advisory Committee* and *Tuvalu Seabed Minerals Advisory Council* (both to operate as the official avenue for consultation between the Government and the community on matters concerning the regulation and management of seabed minerals).

### IV. Requirements for prospecting

29. Belgium, Czech Republic and Germany provide for prospecting in the Area and require the prospectors should be first registered in writing of its intention to prospect to the Secretary-General of the Authority. Belgium and Czech Republic also require the prospector to report such registration and other

documents and communication to the competent authority. Czech Republic further details the information contained in the notification. Germany lists the responsibilities of the prospectors.

30. China defines “resources investigation” as “the research for deposits of resources in the Area, including estimation of the composition, sizes and distribution of deposits of resources and their economic value”, and encourages marine scientific research and resources investigation in the Area, and requires that those who conduct resources investigation to submit copies of data and samples to the Ministry in charge of oceanic administration.

## **V. Licensing regime for activities in the Area**

31. Except for France and Russian Federation, all States establish a procedural mechanism to control and grant the licence or sponsorship for activities in the Area. Some States issue licences (“approval” or “permit”) for activities in the Area, and without explicit reference to the certificate of sponsorship (China, Germany, Japan and the United Kingdom), however, in practice, have issued a certificate of sponsorship for sponsored applications (in the case of COMRA/CMC, BGR, JOGMEC and UKSRL respectively). Singapore regulates the licence regime and clearly provides for a certificate of sponsorship to be issued after a licence has been granted. The Czech Republic, Fiji and Nauru issue a certificate of sponsorship without reference to a licence. Kiribati, Tonga and Tuvalu issue a licence for seabed mining activities within their national jurisdiction and certificate of sponsorship for activities in the Area.

### *General prohibition unless a valid licence is in place*

32. China, Czech Republic, Fiji, Germany, Kiribati, Japan, Nauru, New Zealand, Singapore, Tonga, Tuvalu, and the United Kingdom provide for a general prohibition on deep seabed mining activities in the Area unless the person holds a valid national licence or a certificate of sponsorship. China, Czech Republic, Fiji, Germany, Kiribati, Nauru, Singapore, Tonga, Tuvalu and the United Kingdom further require a valid contract with the Authority for activities in the Area. Czech Republic requires an applicant should get a certificate of sponsorship before negotiations with the Authority.

### *Prerequisite conditions and eligibility of applicants*

33. All persons interested in carrying out Activities in the Area – whether natural or juridical – are to possess the nationality of States Parties or to be under the effective control of them or their nationals (Art. 153, paragraph 2 (b), Convention). Most countries (Belgium, China, Czech Republic, Fiji, Japan, Kiribati, Nauru, New Zealand, Singapore, Tonga and Tuvalu) have adopted the criteria of nationality or registration/residence within their jurisdiction as a necessary requirement to be entitled to apply for a licence/certificate of sponsorship. Belgium and Germany add effective control as a criterion.

### *Application documentation*

34. China, Czech Republic, Fiji, Germany, Japan, Kiribati, Nauru, Tonga and Tuvalu provide that an application must be in writing, and should include or attach the following:

- Basic information of the applicant or evidence of meeting qualification criteria (China, Czech Republic, Fiji, Japan, Kiribati, Nauru, Tonga and Tuvalu);
- Statement on the location, size of the exploration or exploitation area and type of mineral (China, Japan);
- Certificate of financial or investment capability, or proposed methods for financing activities (Belgium, China, Czech Republic, Fiji, Kiribati, Nauru, Tonga and Tuvalu);
- Evidence of technical capability (Belgium, China) or of ownership or lease of a vessel and equipment (Czech Republic, Fiji, Kiribati, Nauru, Tonga and Tuvalu);

- Draft plan of work (China, Czech Republic, Fiji, Germany, Japan, Kiribati, Nauru, Tonga and Tuvalu);
- Environmental impact assessment for activities as recommended by LTC (Belgium);
- Insurance or contingency funding against damage (Czech Republic, Fiji, Kiribati, Nauru, Tonga and Tuvalu);
- Written undertakings (Belgium, Fiji, Kiribati, Nauru, Tonga and Tuvalu);<sup>13</sup>
- Summaries of any studies or other data in relation to the potential of the proposed contract area/sites and potential impact of seabed mineral activities on the marine environment (Fiji, Kiribati, Nauru, Tonga and Tuvalu);
- A list of employees required to operate seabed mineral activities (Fiji, Kiribati, Nauru, Tonga and Tuvalu);
- A capacity-building programme (Fiji, Kiribati, Nauru, Tonga and Tuvalu);
- A statement of no convicted offence/certificate of no criminal convictions in relation to the sponsored party or any of its directors (Fiji, Japan, Kiribati, Nauru, Tonga and Tuvalu);
- Payment of an application fee (Czech Republic, Fiji, Kiribati, Nauru, Tonga and Tuvalu); and
- Other material or necessary documents as prescribed by the competent authority (China, Germany, Japan, Fiji, Kiribati, Nauru, Tonga and Tuvalu).

*Criteria for granting a licence/certificate of sponsorship*

35. China, Germany, New Zealand, Germany, Japan, Fiji, Kiribati, Nauru, Tonga and Tuvalu provide for a number of criteria for granting a licence/certificate of sponsorship, including:

- The application must be in national interest or public interest (China, Singapore, Kiribati, Nauru, Tonga and Tuvalu);
- Generally consistent with rights and obligations under Part XI of the Convention (New Zealand);
- The proposed activities are compatible with applicable national and international laws (Fiji, Kiribati, Nauru, Tonga and Tuvalu);
- Preconditions or eligibility criteria of applicants (Belgium, China, Fiji, Germany, Japan, Kiribati, Nauru, Singapore, Tonga and Tuvalu);
- Financial, technical and technological capabilities and reliability of applicants (Belgium, China, Fiji, Germany, Japan, Kiribati, Nauru, Singapore, Tonga and Tuvalu);
- That the application and the plan of work meet the requirements (including prescribed process) of the Convention, Agreement and rules and regulations of the Authority (Belgium, Germany, Fiji, Kiribati, Nauru, Tonga and Tuvalu);
- Sizes of areas and duration for engaging in deep seabed mining shall comply with prescribed standards (Japan);
- Rational and smooth development of deep seabed mineral resources shall be able to be performed properly (Japan);
- That, plausibly, the activities can be carried out on a commercial basis (Germany);

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<sup>13</sup> The undertakings required by Belgium include the three undertakings as required by the Authority under Exploration Regulations, and a further undertaking that the applicant will comply with the interim measures by the Secretary-General of the Authority and emergency orders issued by the Council. The written undertakings required by Fiji, Kiribati, Nauru, Tonga and Tuvalu include by way of a statutory declaration that the applicant (a) will fully comply with its obligations under the rules, regulations and procedures of the Authority and the Act; (b) warrants that the content of the application is true and accurate to the best of its belief; and (c) intends to apply for a contract with the Authority to conduct seabed mineral activities under the sponsorship.

- Absence of overlapping areas under other permits (Japan) or no existing contract between the Authority and a third party for the same area regarding the exploration for or exploitation of the same resource. (Germany);
- No exploration or exploitation licence may be granted which relates to any area of the deep sea bed in respect of which a contract granted by the Authority is in force (the United Kingdom).
- Whether the undertakings required have been given (Fiji, Kiribati, Nauru, Tonga and Tuvalu)
- Has paid the application fee (Fiji, Kiribati, Nauru, Tonga and Tuvalu);
- Whether the applicant will be applying to the Authority to enter into a corresponding contract with the Authority (Fiji, Kiribati, Nauru, Singapore, Tonga and Tuvalu);
- The proposed activities will not unduly affect the rights of other legitimate ocean users (Fiji, Kiribati, Nauru, Tonga and Tuvalu);
- The proposed activities will not affect the protection and preservation of marine environment (Fiji, Kiribati, Nauru, Tonga, Tuvalu, and the United Kingdom);
- The proposed activities will not affect international and domestic peace and security (Fiji, Kiribati, Nauru, Tonga and Tuvalu); and
- Whether the activity is likely to result in irreparable harm to any community, cultural practice or industry in the Sponsoring State (Fiji, Kiribati, Nauru, Tonga and Tuvalu).

*Decision-making procedures, inter-agency coordination and public consultation.*

36. The decision-making process refers to the processing of the licence/sponsorship application, the timeframe for its consideration, the involvement of any other advisory body or government agency, and any potential dispute settlement mechanism.

37. Eight States provide for an inter-agency coordination mechanism with the advisory bodies mentioned above, or other entities (Belgium, Czech Republic, Fiji, Germany, Kiribati, Nauru, Tonga and Tuvalu). It should be noted that in Fiji, Kiribati and Tuvalu, the advisory bodies previously mentioned are specifically meant to promote transparency and to open up consultation with or provide information to the public. In such cases, the application is examined with consideration given to the recommendations given by advisory bodies and/or the public. The possibility for the applicant to modify its application is provided for in most of the laws studied.

38. With regards to appeal mechanisms, Kiribati, Nauru, Tonga and Tuvalu provide for the right to challenge or contest the decisions of the competent authorities.

*Grant of licence/certificate of sponsorship*

39. China, Fiji, Japan, Kiribati, Nauru, New Zealand, Singapore, Tonga, Tuvalu and the United Kingdom provide for grant of a licence or issue of a certificate of sponsorship. All of them grant licence/certificate of sponsorship based on upon application.

40. Japan, Kiribati, New Zealand, Singapore Tonga, Tuvalu and the United Kingdom may grant two types of licence/certificate of sponsorship: exploration licence/certificate of sponsorship or exploitation (mining) licence/certificate of sponsorship (permits for exploration activities and mining activities in the case of Japan). Singapore's licence must specify whether they are for exploration or exploitation, the type of resource and the part of the Area and a licence must relate to only one type of resource. Whereas Singapore provides that a licence has effect from the issuing date for a specified period and may be extended on the application of the licensee, the United Kingdom leaves the period to the decision of the Secretary of State, and licence will not come into effect before the date on which a corresponding contract signed with the Authority comes into effect. New Zealand and Singapore provide explicitly that more than one licence may be granted to the same person.

41. As for transition between an exploration licence and an exploitation licence, the United Kingdom provides for the preference of the holder of exploration licence in granting exploitation licence: where an exploration licence has been granted, no exploitation licence may be granted which relates to any part of the licenced area in relation to the exploration licence and to any of the mineral resources to which that licence relates unless the exploitation licence is granted to the holder of the exploration licence or with that person's written consent. Japan (the Ministry of Economy, Trade and Industry) may order the holder of permission for exploration activities to apply for permission for mining activities if several conditions are satisfied.

*Licence/certificate of sponsorship and corresponding contract with the Authority*

42. China, Czech Republic, Fiji, Kiribati, Nauru, Singapore, Tonga and Tuvalu require a valid licence/certificate of sponsorship to be issued by the competent authority, and a valid contract signed with the Authority before commencing activities in the Area. China requires further that the contractor submit a copy of the exploration or exploitation contract with the Authority to the Ministry not more than 30 days from the date of the signature.

*Terms of a certificate of sponsorship*

43. Fiji, Kiribati, Nauru, Tonga and Tuvalu specify the terms of a certificate of sponsorship, which contain:

- Name of the sponsored party;
- Statement of nationality or effective control;
- A statement by the Sponsoring State that it sponsors the sponsored party;
- Date of deposit by the State of its instrument of ratification of, or accession or succession to the Convention;
- A declaration that the State assumes responsibilities in accordance with article 139, article 153, paragraph 4, and Annex III, article 4, paragraph 4, of the Convention;
- The period of time for which the certificate of sponsorship shall remain in force unless otherwise terminated; and
- Any other content reasonably required by the Authority.
- A certificate of sponsorship shall be duly signed.

*Sponsorship Agreements*

44. Fiji, Kiribati, Nauru, Tonga and Tuvalu have a special provision on Sponsorship Agreement. The competent national authority, subject to approval by cabinet or minister, may enter into written agreements with the sponsored party at any time to establish additional terms and conditions as to the sponsorship arrangement, including terms as to the calculation and payment of royalties, taxes, sponsorship fee or other fiscal impositions payable by the sponsored party, provided the terms of such an agreement do not or are not likely to lead to a contravention by the sponsoring State or the sponsored party of the rules, regulations and procedures of the Authority, nor be inconsistent with any international law obligations of the Sponsoring State.

*Transfer of licence/certificate of sponsorship/rights and obligations under contract*

45. The Czech Republic, Singapore and the United Kingdom allow the transfer of the licence/certificate of sponsorship subject to prior (written) approval procedure. Japan requires approval for an assignment and acceptance of the whole or a part of deep seabed mining.

46. Singapore may approve the transfer of licence upon the application of the licensee and the intended transferee and limit the transfer to a qualified Singapore company. The transfer of a licence does not affect

any criminal or civil liability incurred by the original licensee. When the Minister has approved the transfer of a licence, the Minister may sponsor the new licensee's application to the Authority for a corresponding contract with the Authority and issue a certificate of sponsorship to the new licensee.

47. China provides that, for any transfer of rights and obligations under an exploration or exploitation contract, or any significant changes to the contract, the contractor shall obtain prior approval of the Ministry for oceanic administration.

48. Germany, however, does not allow the transfer of an approval (licence).

*Variation, suspension or revocation of a licence/certificate of sponsorship*

49. Many States provide for variation, suspension and revocation of a licence/certificate of sponsorship. The competent national authority may vary, suspend or revoke the licence/certificate of sponsorship in the following cases where the licensed or sponsored entity or otherwise:

- No longer meets the qualification criteria (Japan, Kiribati, Nauru, Tonga);
- Has violated the conditions of the licence or provisions of national laws (Japan, Singapore, the United Kingdom);
- Does not comply with orders/directions issued by the competent national authority (Japan, Singapore, Kiribati, Nauru, Tonga);
- Engages in activities in any manner other than the approved plans of work or unsatisfactorily or no material efforts have been made by the sponsored party to undertake the seabed activities for a specified period (Japan, Singapore, Kiribati, Nauru, Tonga);
- Has obtained permission through wrongful means (Japan);
- Has its corresponding contract with the Authority suspended for any reason or it is in the national interest to suspend or revoke the licence (Singapore);
- If required to ensure the safety, health or welfare of persons engaged in any of the licensed operations or any person (Kiribati, Nauru, Tonga and the United Kingdom);
- If required to protect marine environment or any marine creatures, plants or other organisms or their habitat (Kiribati, Nauru, Tonga and the United Kingdom);
- If required to avoid a conflict with any obligation of the sponsoring State arising out of any international agreement or instrument in force (Kiribati, Nauru, Tonga, and the United Kingdom);
- Upon the bankruptcy, insolvency or receivership of, or ceasing to exist as a legal entity of, the sponsored party (Kiribati, Nauru, Tonga);
- Where there has been a serious, persistent or wilful breach by the sponsored party of the rules of the Authority, national legislation or binding decision of a dispute settlement body (Kiribati, Nauru, Tonga);
- Where a security deposit has not been deposited (Kiribati, Nauru, Tonga);
- Any payment or deposit is in arrears or unpaid (Kiribati, Nauru, Tonga); and
- Providing false or misleading information to the Authority (Kiribati, Nauru, Tonga).

*Termination or lapse of a certificate of sponsorship*

50. Fiji, Kiribati, Nauru, Singapore, Tonga and Tuvalu provide for termination of a certificate of sponsorship if:

- The Sponsored Party's contract with the Authority expires or is terminated;
- It is surrendered by the Sponsored Party;
- It is revoked by the competent national authority. Upon termination, all rights granted by the Sponsoring State shall cease.

*Renewal of the certificate of sponsorship*

51. Fiji, Kiribati, Nauru, Tonga and Tuvalu provide that a certificate of sponsorship may be renewed by the competent national authority for successive periods of up to five years each upon application.

**VI. Rights, obligations and responsibility/Liability of a licensee/sponsored party/contractor**

52. China, Czech Republic, Fiji, Germany, Kiribati, Japan, Nauru, Russian Federation, Tonga and Tuvalu provide for rights, obligations and responsibilities of the licensee/sponsored party or contractor in their legislation. Singapore and the United Kingdom provide for obligations of the licensee under the terms and conditions of the licence.

53. China affirms that the contractor has the exclusive right to explore for and exploit the specific type of resource in the contract area. The Russian Federation provides that the contractor (State geological enterprise Yuzhmorgeologia) shall enjoy the protection of the Russian Federation in the conduct of activities for the exploration and exploitation of the mineral resources in the designated sites.

54. The obligations of a licensee/sponsored party or contractor affirmed in the legislation may be classified into the following categories:

(i) General obligations

- Be responsible for fulfilling the obligations or comply with applicable provisions under the Convention, the Implementing Agreement, the rules, regulations and procedures of the Authority, the decisions of the Authority and its organs (Fiji, Germany, Kiribati, Nauru, Singapore, Tonga, Tuvalu and the United Kingdom);
- Fulfill its obligations under the exploration or exploitation contract and plan of work (Belgium, China, Germany, Singapore, the United Kingdom);
- Fulfil its obligations under national law and regulations and administrative measures (Germany); and
- Carry out any exploration or exploitation activities diligently (the United Kingdom).

(ii) Safety and labor protection

- Ensure the safety of the vessels, installation, equipment or operation in the Area or comply with the relative laws, regulations and standards (China, Germany, Fiji, Kiribati, Nauru, Tonga and Tuvalu);
- Ensure the safety, health, welfare or working conditions of persons employed in the activities or comply with relative laws, regulations and standards (China, Nauru, Tonga and the United Kingdom); and
- Not to proceed or continue with activities if likely to cause significant adverse impact to the safety, health or welfare of any person (Fiji, Nauru).

(iii) Environmental protection

- Protect the marine environment in the Area (China, Germany);
- Remove the consequences of damage caused by prospecting or activities in the Area (Czech Republic);
- Dispose any waste material resulting from processing or other treatment of any mineral resources extracted on any ship (the United Kingdom);
- Avoid or minimize any harmful effects to marine creatures, plants and other organisms and their habitat (the United Kingdom);
- Apply the precautionary approach and best environmental practice (Belgium, Fiji, Kiribati, Nauru, Tonga and Tuvalu);

- Not dump mineral materials or waste (Fiji, Nauru);
  - Not proceed or continue with activities if likely to cause significant adverse impact to marine environment (Fiji, Nauru).
- (iv) Reporting and notification
- Submit the report to the Authority and the competent national authority on its exploration or exploitation activities annually or at such intervals as specified (Belgium, China, Singapore);
  - Submit the emergency plan and communications with the Secretary-General regarding accidents to the competent national authority (Belgium);
  - To ensure the content of any data, reports or other information submitted to the Authority are true, accurate and comprehensive (Fiji, Kiribati, Nauru, Tonga and Tuvalu);
  - Report to the Authority and the competent national authority of any incident and respond efficiently and reasonably (Fiji, Kiribati, Nauru, Tonga and Tuvalu);
  - Inform of any matter relating to its exploration or exploitation activities (Singapore);
  - Notify the Authority or/and competent national authority of new information or data or any change related to the data and documents (Belgium, Czech Republic, Fiji, Kiribati, Nauru, Tonga and Tuvalu);
  - Submit plans, returns, accounts or other records with respect to activities (the United Kingdom); and
  - Submit samples of the licensed mineral resource discovered in or extracted from the licensed area (the United Kingdom).
- (i) Supervision and inspection
- Facilitate or provide assistance or cooperation to supervision and inspection (China, Kiribati, Nauru, Tonga and Tuvalu).
- (v) Insurance and security
- Maintain effective insurance against damage caused by activities in the Area (Belgium, Czech Republic, Fiji, Kiribati, Nauru, Tonga and Tuvalu); and
  - Provide security for the due performance of its obligations (Singapore).
- (vi) Liability and indemnity
- Be liable for any damage, compensation or penalties from its wrongful act in the conduct of the seabed activities (Belgium, Singapore, Fiji, Kiribati, Nauru, Tonga and Tuvalu);
  - Indemnify the sponsoring State against any liability incurred by the sponsoring State in relation to the licensee's exploration and exploitation activities (Singapore, Fiji, Kiribati, Nauru, Tonga and Tuvalu);
  - Compensate for any environmental and other damage incurred in Japan in connection with deep seabed mining (Japan).
- (vii) Other
- Report and safeguard the objects of archaeological and historical nature in the Area (China, Germany, Kiribati, Tonga and Tuvalu);
  - Offer training opportunities or participation into activities in the Area (Fiji, Kiribati, Nauru, Tonga and Tuvalu); and
  - Not proceed or continue with the activities if likely to cause significant adverse impact to other existing or planned legitimate sea uses including but not limited to marine scientific research, navigation, submarine cables, fisheries or conservation activities (Fiji, Kiribati, Nauru, Tonga and Tuvalu).



## **VII. Role and responsibilities of the sponsoring State**

55. Czech Republic, Fiji, Kiribati, Nauru, Tonga and Tuvalu provide for a number of responsibilities of the sponsoring State, including:

- Keep records of notification of prospecting, licence/sponsorship application received, licence/sponsorship certificate issued, contracts with the Authority and all relative communications, reports or other information; (Czech Republic, Fiji, Kiribati, Nauru, Tonga and Tuvalu);
- Liaise with the Authority, including notifications of issuance, revocation and renewal of sponsorship certificate and facilitate application (Fiji, Kiribati, Nauru, Tonga and Tuvalu);
- Review and approval assignment of rights and obligations or transfer of licence/certificate of sponsorship and keep corresponding records (China, Czech Republic, Fiji, Japan, Kiribati, Nauru, Singapore, Tonga, Tuvalu and the United Kingdom);
- Carry out monitoring, supervision and inspection activities (China, Czech Republic, Fiji, Germany, Japan, Kiribati, Nauru, Singapore, Tonga, Tuvalu and the United Kingdom);
- Hold or commission inquiries into incidents (Fiji, Kiribati, Nauru, Tonga and Tuvalu)
- Take all actions necessary to give effect to the sponsorship, including undertaking any communication with and providing any assistance, documentation, certificates and undertakings to the Authority (Fiji, Kiribati, Nauru, Tonga and Tuvalu);
- Ensure that its conduct adheres to the requirements and standards established by general principles of international law (Fiji, Kiribati, Nauru, Tonga and Tuvalu);
- Take all appropriate means to exercise its effective control over sponsored party or to ensure that their seabed mineral activities are carried out in conformity with the Convention, the rules of the Authority and other requirements and standards established by general principles of international law (Fiji, Kiribati, Nauru, Tonga and Tuvalu);
- Not impose unnecessary, disproportionate, or duplicate regulatory burden on sponsored parties (Fiji, Kiribati, Nauru, Tonga and Tuvalu); and
- Promote the application of the precautionary approach (Belgium, Fiji, Kiribati, Nauru, Tonga and Tuvalu)
- Promote the employment of best environmental practice (Kiribati, Nauru, and Tuvalu).

## **VIII. Monitoring, supervision and inspection**

56. China, Czech Republic, Fiji, Germany, Japan, Kiribati, Nauru, Singapore, Tonga, Tuvalu and the United Kingdom provide for monitoring, supervision and/or inspection. The activities carried out by the contractor should be under supervision of the competent national authority or representative designated by the competent national authority. The measures may include:

- Sending an inspector or obtain access to the site or any vessel, installation and equipment used by the contractors and to examine documentations, including logbook, records and data (China, Czech Republic, Germany, Fiji, Japan, Kiribati, Nauru, Tonga and Tuvalu);
- Requiring the contractor to report regularly or at request on the implementation of exploration or exploitation contract (Belgium, China and Czech Republic, Japan);
- Requiring the contractor to provide assistance and cooperation to the supervision and inspection (China, Czech Republic, Kiribati, Nauru, Tonga and Tuvalu);
- Impose reporting, recording and retention required to ensure compliance (Germany);
- Give written directions/enforcement order, general or specific, to a licensee/sponsored party and may impose a financial penalty or imprisonment for the non-compliance with the directions (Singapore, Fiji, Kiribati, Nauru, Tonga and Tuvalu);

- Take administrative actions and/or impose monetary penalties in case of any serious risk of material breach of rules of the Authority including issuing written warning, entering into a written agreement on remedial action, issuing a written notice requiring the sponsored party to take/or not to take specified action (Fiji, Kiribati, Nauru, Tonga and Tuvalu); and
- Require additional information for the purpose of supervision (Belgium).

## **IX. Marine environmental protection**

57. All states stress the need for protection of the marine environment.<sup>14</sup> Some States set the element of marine environmental protection as one of criteria for granting a licence/certificate of sponsorship (Kiribati, Nauru, Tonga, Tuvalu and the United Kingdom), while others provides for the general or specific obligations of the licensee/contractor to protect marine environment (Belgium, China, Czech Republic, Germany, Japan and the United Kingdom).

58. Some States emphasize the application of the precautionary approach and best environmental practice (Fiji, Kiribati, Nauru, Tonga and Tuvalu), while others implicitly include these principles by endorsing the Authority's rules, regulations and procedures. The Russian Federation refers more generally to the universally recognised principles of international law and treaties.

59. Belgium explicitly provides for the application of the precautionary approach and principles of prevention, sustainable management, polluter-pays and restoration, and authorizes adoption of rules for protection of marine environment, for the protection of human life and for conditions applicable to installations used for activities in the Area, which should be more stringent than the rules, regulations and procedures of the Authority. Japan also recognises restoration as an option, where possible and proportionate.

60. Situations of emergency are also provided for in most jurisdictions, mainly through the obligation to provide emergency and contingency plans by the Authority at the time of application. The Acts of Fiji, Kiribati, Nauru, Tonga and Tuvalu contain 'incident' reporting, response and inquiry processes which are triggered by situations, inter alia, of pollution or serious harm to the environment.

61. In respect of marine environmental protection, China provides for specific obligations of the contractor to take necessary measures to prevent, reduce and control pollution and other hazards to the marine environment arising from the activities in the exploration or exploitation area as far as reasonably practical, applying the available advanced technology; establish environmental baselines, and assess the impact of the exploration or exploitation activities to the marine environment; establish and implement the environmental monitoring programme; and take necessary measures to protect and preserve rare or fragile ecosystem as well as the habitat of depleted, threatened or endangered species and other forms of marine life, protect marine biodiversity and ensure sustainable use of marine resources.

62. Fiji, Kiribati, Nauru, Tonga and Tuvalu provide that the competent national authority must maintain effective control of seabed mineral activities undertaken and the protection and preservation of the marine environment.

63. Kiribati and Tuvalu provide that the Act shall where possible be interpreted consistently with international obligations under the Convention and other relevant international instrument, and specifically State's duties to (a) protect and preserve the marine environment and rare or fragile ecosystems and habitats; (b) prevent, reduce and control pollution from seabed activities, or caused by ships or by dumping of waste and other matter at sea; (c) prevent trans-boundary harm; (d) conserve biodiversity; (e) apply the precautionary approach; (f) employ best environmental practice; (g) conduct prior environmental impact assessment of activities likely to cause serious harm

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<sup>14</sup> Most States have general laws on environmental protection, which are not examined in this study but may have direct applicability to activities in the Area conducted by State nationals or persons under the control of the State.

to the marine environment and (h) take measures for ensuring safety at sea. Kiribati and Tuvalu further attach environmental impact assessment contents as a schedule to the Act.

## **X. Data and information**

64. As a general rule, Belgium, Fiji, Kiribati, Nauru, Tonga, Tuvalu and the United Kingdom regard data and information received as confidential or to be held with appropriate confidentiality, with prescribed exceptions as follows:

- Data and information related to the protection and preservation of marine environment, in particular those collected from environmental monitoring programmes (Belgium)
- Data and information generally known or publicly available from other sources (Kiribati and Tuvalu)
- The information not about a licensee's technical specifications or financial resources, confidential information contained in a licence application, a trade secret, or information the disclosure could reasonably be expected to adversely affect the person's business, commercial or financial affairs (Kiribati and Tuvalu)
- Where disclosure is made with consent of the sponsored party/applicant (Belgium, Fiji, Kiribati, Nauru, Tonga, Tuvalu and the United Kingdom)
- Where disclosure is made for the purpose of public consultation or maintaining a public register of titles; (Kiribati and Tuvalu)
- Where disclosure is made by order of the court (Kiribati, Tonga and Tuvalu, the United Kingdom)
- Where disclosure is made for the purpose of any arbitration or litigation (Kiribati and Tuvalu)

65. China requires the Ministry responsible for oceanic administration to register and retain the information and samples submitted by the persons or entities that carry out deep seabed resources investigation, exploration or exploitation activities, and make such information and sample available for public use pursuant to relative rules. Japan requires the Minister of Economy, Trade and Industry to prepare documents and drawings declaring the state of permission and other necessary items relating to deep seabed mining and make them available for public inspection.

## **XI. Financial arrangements**

### *Fees and payments*

66. The study identified three recurring types of fees or payments: an application fee to cover the costs for government of reviewing a licence/sponsorship application; an annual administrative fee, and payments upon recovery of minerals.

67. Fiji, Kiribati, Nauru, Tonga and Tuvalu provide for each of these, with the recovery fee potentially standing in lieu of profit taxation. Nauru sets the annual administrative fee at US\$20,000. In Kiribati, Tonga and Tuvalu, the annual fee ceases and is replaced by the recovery payments at the time of commercial exploitation. Fiji and Nauru specify that the amount of the recovery payment will be based on the percentage of the latest market value of the metal content contained in the seabed minerals to be extracted by the sponsored party, and take into account the set-up, exploration and exploitation costs incurred by the sponsored party.

68. Three other States require the payment of an annual fee: Belgium, Germany and the United Kingdom. While Belgium has a fixed amount (€ 40,000), Germany and the United Kingdom leave it to the competent authorities to set the rates.

69. Ten States out of fifteen require an application fee (Belgium, Czech Republic, Fiji, Germany, Japan, Kiribati, Nauru, Tonga, Tuvalu and the United Kingdom). However, only Belgium and Nauru seem to have set a fixed amount (respectively €10,000 and US\$15,000).

### *Funds and Security*

70. Kiribati, Nauru, Tonga and Tuvalu have established a dedicated seabed mineral fund for the management of revenue received from the sponsored parties/applicants. Belgium provides that the annual fees should go to a pre-existing environmental fund, which is not specific to seabed mining activities and the functions of which are not specified.

71. Nearly all of the sponsoring State laws require an applicant to provide evidence or written undertaking as to financial capacity at application stage, some expressly including capacity for adequate compensation for any environmental damage in that requirement. Several countries (Singapore, Fiji, Kiribati, Nauru, Tonga and Tuvalu) follow this through and require financial guarantees or security after licence/sponsorship has been granted, to address potential damage or take measures towards rectifying the contractor's potential failure to fulfil its obligations. Fiji, Kiribati, Nauru, Tonga and Tuvalu may require a sponsored party to deposit security as a guarantee of performance of its obligations or rectify any damage or loss caused as a result of failure to perform obligations. Kiribati, Tonga and Tuvalu further specify that the security may be used for clean-up or compensation costs in respect of any damage caused by pollution or other incident occurring as a result of seabed mineral activities. Fiji and Nauru require it after an exploitation contract has been granted by the Authority and prior to exploitation commencing. Nauru also adds that the setting of any such security takes into account the type and quantum of any security that the sponsored party is also required to deposit with the Authority.

## **XII. Offences and penalties**

72. Almost every State has provided for specific offences and sanctions, except for France and Russia. The spectrum of offences and sanctions is broad and diverse, although some common elements can be drawn out. Germany, Singapore, New Zealand, Fiji, Japan, Kiribati, Nauru, Tonga, Tuvalu and the United Kingdom provide for offences of body corporates and their officers.

### *Offences*

73. Any person is guilty of an offence for:

- Undertaking prospecting and/or seabed mineral activities without notification to or authorization/licence from the State; (Belgium, China, Czech Republic, Germany, Japan, New Zealand, Singapore, Tuvalu);
- Undertaking seabed mineral activities without concluding a contract with the Authority (Belgium, China, Czech Republic, Germany);
- Carrying out activities in breach of the conditions of the licence (Germany, Singapore);
- The breach of contractual obligations and/or provisions of the Convention, the Agreement and rules, regulations and procedures of the Authority (China, Germany);
- Obtaining a licence through fraud or other illegal means (Japan);
- Failure to provide required information/report or providing false or misleading information (Belgium, China, Germany, Japan, Kiribati, Nauru, Tonga and Tuvalu);
- Not complying with enforcement orders (requiring corrective action) or directions or ordinance (Germany, Singapore, Fiji, Japan, Kiribati, Nauru, Tonga, Tuvalu);
- Causing harm to marine environment (China);
- Refusing to cooperate to or wilful obstructing supervision, inspections or monitoring (China, Germany, Fiji, Japan, Nauru, Tonga and Tuvalu);
- Interference with seabed mining activities (Kiribati, Nauru, Tonga and Tuvalu, the United Kingdom);
- Unduly interference with other ocean users (Kiribati, Nauru, Tonga and Tuvalu);
- Disclosure of confidential information (Fiji, Kiribati, Tonga and Tuvalu and the United Kingdom);

- Failure to comply with vessel standards (Kiribati, Tonga and Tuvalu);
- Vessel enters or remains in a “safety zone” in contravention of relative rules, which is established for protecting an installation, infrastructure facility or vessel being used for seabed mining activities; (Kiribati, Tonga and Tuvalu); and
- Public service employees acquire or retain any right or interest or share-holding without approval or fail to disclose such interest. (Fiji, Kiribati, Nauru, Tonga and Tuvalu).

#### *Penalties*

74. Nearly every State, except for France and Russia, explicitly provide for sanctions in case of a breach of their obligations by contractors.

75. All domestic laws studied provide for the suspension or revocation of sponsorship in case of non-compliance of the contractor with its obligations. They also set up financial penalty mechanisms. The amounts of the fines can vary depending on the type of offence, but the severity of the sanctions range broadly from one country to another. Czech Republic sanctions the act of conducting activities in the Area without sponsorship or without a contract with over 4 million USD, while Tonga’s and Kiribati’s fines for an equivalent offence can be imposed up to 1 million USD.

76. Some countries (for example, China and Tonga) can also confiscate, in addition to the fines, the gains and products derived from the illegal mining activities. New Zealand can add to the fine not exceeding \$200,000 on summary conviction, an amount up to three times the value of any commercial gain.

77. It should be noted that in every country, the approach to sanctions is incremental (suspension and/or revocation only happens after written notice and warnings) and is subject to the principle of proportionality (the fines are always given as a maximum amount).

78. Many States provide for possible imprisonment with a maximum number of years for specific offences (mostly in case of deliberate breach of its obligations). China refers to the applicability of criminal law without specifying minimum or maximum imprisonment time. Kiribati, Nauru, Tonga and Tuvalu impose the strictest sentences, with possible sanctions of up to 10 years of imprisonment. Belgium may impose a fine in a double maximum amount of the prescribed figure.

<b>States</b>	<b>Suspension/ Revocation</b>	<b>Levels of fines relating to various offences (as in the legislation)</b>	<b>Imprisonment</b>	<b>Compensation/ remedy for damage</b>
Belgium	√	€ 25 to 25,000	15 days to 1 year	√
China	√	¥ 20,000 to 100,00	criminal penalty	√
Czech Rep.	√	CZK 1 to 100 million		
Fiji	√	up to \$ 10,000	5 years	√
France	-	-	-	-
Germany	√	up to € 50,000	up to 5 years	
Japan	√	up to ¥ 1,000,000	1 to 5 years	√
Kiribati	√	\$50,000 to 500,000	up to 10 years	√
Nauru	√	\$ 5000 to 100,000	up to 10 years	√
New Zealand	√	\$ 200,000 + up to 3 times the value of commercial gains	Potentially	Potentially

Russian Federation	-	-	-	-
Singapore	√	up to \$ 500,000	up to 3 months	√
Tonga	√	\$ 100,000 to 1,000,000	up to 10 years	√
Tuvalu	√	up to \$ 250,000	up to 10 years	√
the United Kingdom	√	£ 1,000 or another sum fixed by order	up to 2 years	

### **XIII. Reasonable regard to other users of the marine environment**

79. Several pieces of legislation also provide for reasonable regard to other users of the marine environment. The United Kingdom obliges the licensee to exercise his rights under the license with reasonable regard to the interests of other persons in their exercise of the freedom of the high seas. Fiji, Kiribati, Nauru, Tonga and Tuvalu require, as one of the qualification criteria, that the proposed plan of work will not unduly affect the rights of other legitimate sea users and highlight that nothing in the legislation authorises the unlawful interference with the freedom of the high seas or the conduct of marine scientific research by other persons or nations under the general principles of international law. Fiji, Kiribati, Nauru, Tonga and Tuvalu require the sponsored party not to proceed or continue with the seabed activities if they are likely to cause significant adverse impact to other existing or planned legitimate sea uses including but not limited to marine scientific research, navigation, submarine cables, fisheries or conservation activities.

### **XIV. Objects of an archaeological or historical nature**

80. China, Germany, Kiribati, Tonga and Tuvalu provide for objects of an archaeological or historical nature. China obliges the contractor to safeguard the objects of an archaeological or historical nature found in the contract area. Germany, Kiribati, Tonga and Tuvalu require that objects of an archaeological or historical nature found in the Area must be reported to the national competent authority and treated in accordance with its instructions, and further provide that these instructions shall take into account article 149 and/or 303 of the Convention.

### **XV. Rights of other States**

81. Fiji, Kiribati, Nauru and Tuvalu provide that nothing in the Act (shall in any way) affects the rights of coastal States in accordance with article 142 and other relevant provisions of the Convention. Nauru and Tuvalu further provide that in the event that any coastal State notify the national competent authority in writing of the grounds for believing that the seabed mineral activities have caused, are causing or are likely to cause serious harm to the marine environment, the national competent authority shall provide any applicant or licensee affected by the notice with a reasonable opportunity to examine the evidence, if any, provided by the coastal State and submit its observation to the national competent authority within a reasonable period of time. If in the opinion of the national competent authority that there are clear grounds, the authority must take immediate measures of a temporary nature to stop, prevent or mitigate harm to the marine environment, including by direction or Order to any affected licensee.

### **XVI. Dispute settlement**

#### *General*

82. The Czech Republic, Fiji, Kiribati, Nauru, Tonga and Tuvalu provide that disputes connected with prospecting or activities in the Area shall be resolved pursuant to the provisions of the Convention. Fiji, Kiribati, Nauru, Tonga and Tuvalu further provide that any dispute between the sponsoring State and the

sponsored party shall be dealt with by mutual agreement or mediation, or for arbitration in accordance with its domestic law. Fiji, Kiribati and Nauru further provides for the option of submission of the case to the International Tribunal of the Law of the Sea for any case expressly provided for in Part XI of the UNCLOS. Tonga also provides that such dispute may be dealt with by application to the Supreme Court of Tonga.

#### *Recognition and Enforcement of Chamber Decision or arbitral awards*

83. Singapore and the United Kingdom provide that a decision of the Seabed Disputes Chamber of the Tribunal in relation to a dispute may be registered in the courts, on the application of an interested person. Where a decision is registered, it is to be treated as if it had been originally rendered by the registering court. Both Singapore and the United Kingdom provide that an arbitral award made pursuant to Article 188(2)(a) of the Convention is to be treated as a foreign award.

84. New Zealand provides that every final decision rendered by the Seabed Disputes Chamber of the ITLOS or a commercial arbitral tribunal under article 188, paragraph 2 (a) of the Convention in respect of a contract between the Authority and a contractor, and every decision of the Chamber shall be enforceable in New Zealand.

### **XVII. Terms and interpretation**

85. All national legislation contains a section on terms and interpretation. The most common ones include: activities in the Area, the Agreement, Area, the Convention, corresponding contract, contractor, deep seabed, deep seabed mining operations, exploitation, exploration, harm to the marine environment, inspector, licensed or contract area, licensee, mineral resources, plan of work and prospecting (China, Czech Republic, Germany, Japan, New Zealand, Singapore and the United Kingdom).

86. Fiji, Kiribati, Nauru, Tonga and Tuvalu all provide a comprehensive list of terms and definitions: affiliate, ancillary operations, applicant, application, continental shelf, Environmental Act, environment, environmental impact assessment, exclusive economic zone, incident, licensee, marine environment, marine reserve, marine scientific research, Minister, Ministry, person, the precautionary approach, protected area, public official, qualification criteria, quality and qualified, regulations, rules of the Authority, seabed mineral activities, serious harm, sponsored party, sponsorship certificate, sponsorship qualification criteria, sponsoring State, and State Party. Fiji, Kiribati, Nauru, Tonga and Tuvalu also contain a paragraph to state that unless a contrary intention appears, works and expressions used in their Acts are accorded the same meaning as used in the Convention.

### **XVIII. Implementing regulations and guidelines**

87. Fiji, Kiribati, Nauru, Tonga, Tuvalu, Singapore and the United Kingdom authorize the Minister (in case of Kiribati, Nauru, Tonga and Tuvalu, with the consent of Cabinet) to make regulations to give effect to the provisions of the Act. Nauru requires that such Regulations made must be consistent with the Convention, rules, regulations and procedures of the Authority and other applicable standards of international law. Kiribati, Tonga and Tuvalu list over 20 subject matters for such regulations, including, *inter alia*: environmental impact assessment and establishment of environmental baseline data, fiscal regime, operation of the seabed mineral fund, post-mining monitoring, information handling, inquiries into accidents, the prerequisite conditions to the issue of a certificate of sponsorship, and further matters in relation to sponsorship certificate or agreement. Singapore may make regulations in respect of, *inter alia*, fees, service of a document, criteria for granting or transferring a licence, procedures and forms for applications, any requirements that a licensee must comply with and administrative penalties. The United Kingdom attaches a schedule of subject matters of regulations, including general (form and content and supporting evidence of applications, safety, health or welfare of persons employed in operations, inquiries into accidents and prohibition of working methods likely to be harmful to the marine environment), provisions relating to inspectors and offences.

88. China authorizes the Ministry in charge of oceanic administration to manage and supervise activities in the Area. The State Oceanic Administration has issued, in 2017, three administrative regulations on licensing for exploration and exploitation activities in the Area, sample management, and data and information management respectively. The Czech Republic refers to other separate legal regulations in respect of inspection procedure and collection of fines levied. In Germany, the Federal Ministry of Economics and Technology is authorized to enact ordinances containing provisions on the implementation of the rules and regulations on prospecting, exploration and exploitation of resources in the Area. As regard to Japan, the Act on Interim Measures for Deep Seabed Mining 1982 provides for the regulations of mining activities by Japanese persons in the Area. The Act is implemented by the Ordinance for Enforcement, which was enacted also in 1982 and last amended in 2013. The Ordinance for Enforcement (Article 4) specifies three areas by virtue of coordinates, with two areas respectively correspond to areas subject to exploration contract by DORD and JOGMEC.<sup>15</sup>

89. Kiribati, Tonga and Tuvalu authorize the national competent authority to publish and disseminate procedures, standards, manuals, recommended practice and guidelines of a technical or administrative nature relating to seabed mineral activities or to assist the contractors, Governmental agencies, and other interested parties in the implementation of the law and regulations, including by reference to any recommendations of any organ of the Authority.

#### **XIX. Cooperation mechanisms with the Authority**

90. Kiribati, Nauru, Tonga and Tuvalu recognise the need for coordination with the Authority regarding the exercise of their powers, in particular the responsibilities of State Parties of the Convention to assist the Authority in exercising its duties. Kiribati, Nauru, Tonga and Tuvalu specify that the State should not impose unnecessary, disproportionate or duplicate regulatory burden on the sponsored parties, nor impose requirements that are inconsistent with the international legal regime.

91. The Czech Republic and Germany also indicate the potential regulatory burden of duplications and the need to avoid it.

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<sup>15</sup> See Page 58, Study to investigate state of knowledge of deep sea mining, final report Annex 2 Legal Analysis, FWC MARE/2012/06-SC E1/2013/04, Brussels/Rotterdam, 28 August 2014.



## CONCLUDING REMARKS

92. While there are commonalities between the laws studied in this review, particularly between the Pacific Island States, there is also a divergence in specific content and approaches taken. Naturally, this will stem from drafting styles, the particular national regulatory and institutional contexts and differences in common law and civil law legal systems, and how the relationship between the relevant parties is determined for legal purposes. It can be noted in general that the laws adhere closely to the Convention and the Authority's rules, regulations and procedures in relation to sponsorship application processes, but tend to be more individual and detailed in relation to ongoing supervision of the contract. Nevertheless, the content of any sponsoring State rules and regulations is a largely a matter for the sovereign State, albeit within the context of its international legal responsibilities under the Convention, in particular under article 139, and as articulated by the Seabed Disputes Chamber of the International Tribunal on the Law of the Sea.

93. Several States have already highlighted in their laws of the potential for duplicated regulatory burden. As the roles and responsibilities of the Authority and sponsoring States are more clearly articulated, administrative procedures and measures may require updating to reflect any clarification in these respective roles. This will be particularly important in the area of compliance and enforcement. Equally, as the Authority continues to develop its regulatory framework to manage and administer activities in the Area, sponsoring States will be presented with a clearer picture of the regulatory provisions, including contract terms, standards and operational guidelines that must be adhered to by contractors. To this end, sponsoring States have generally incorporated provisions that require sponsored contractors to comply with the Convention and the rules of the Authority.

94. In connection with the requirement for sponsoring States to assist the Authority by taking all necessary measures to ensure compliance, individual States have the power to put in place measures which the Authority cannot. These include, as evident from this review, the creation of offences and the imposition of civil and criminal sanctions.

95. This review and the common elements derived from the legislation submitted by States is a useful reference for the sponsoring States or other potential sponsoring States to update or adopt legislation in respect of deep seabed mining activities. As highlighted by the Chamber however, while the due diligence measures that a sponsoring state should take in discharging its responsibility to ensure obligation include the adoption of laws and regulations and the implementation of administrative measures to secure compliance, these are to be reasonably appropriate within the context of a State's domestic legal system. That is, there is no definitive set of rules and regulations that should be adopted by a sovereign State, albeit over time consistent approaches and practices will develop simultaneously as the Authority's legal and administrative framework develops.

## Annex I

### List of legislation reviewed

The table presents the references to the laws that were compared in the present study.

The links to most of laws are available at <https://www.isa.org.jm/national-legislation-database>.

Belgium	Act on prospecting and exploration for, and exploitation of, resources of the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction, adopted on 17 August 2013
China	Law of the People's Republic of China on Exploration for and Exploitation of Resources in the Deep Seabed Area. Adopted February 26, 2016 and effective as of May 1, 2016
Czech Republic	Act No. 158/2000 of 18 May 2000 on Prospecting, Exploration for and Exploitation of Mineral Resources from the Seabed beyond the Limits of National Jurisdiction
France	Ordinance No. 2016-1687 of 8 December 2016 relating to the maritime areas under the sovereignty or jurisdiction of the Republic of France
Fiji	International Seabed Mineral Management Decree (Decree No. 21, 12.07.2013).
Germany	Seabed Mining Act of 6 June 1995(Amended by article 74 of the Act of 8 December 2010)
Japan	Law on Interim Measures for Deep Seabed Mining, 1982
Kiribati	Seabed Minerals Act (2017)
Nauru	International Seabed Minerals Act (Act No. 26 of 2015)
New Zealand	United Nations Convention on the Law of the Sea Act (1996)
the Russian Federation	Decree of the President of November 22, 1994 No. 2099 "About activities of the Russian physical and legal entities for exploration and development of mineral resources of the seabed outside the continental shelf"
	Government Decree of April 25, 1995 No. 410 "About the procedure of activities of the Russian physical and legal entities for development of mineral resources of the seabed outside the continental shelf"
Singapore	Deep Seabed Mining Act (2015)
Tonga	Tonga Seabed Minerals Act (2014)
Tuvalu	Tuvalu Seabed Minerals Act (2014)
the United Kingdom	Deep Sea Mining (Temporary Provisions) Act 1981 (amended by the Deep Sea Mining Act 2014)