

# WORKSHOP ON THE ROLE OF THE SPONSORING STATE: DIVISION OF RESPONSIBILITIES BETWEEN ISA AND THE SPONSORING STATE

# OVERVIEW: OBJECTIVES

- In the development of the Exploitation Regulations, it became clear that there was a lack of a clear division of responsibilities between the ISA and the Sponsoring State
- ‘Responsibilities’ refer to primary obligations whereas the term ‘liability’ refers to the secondary obligation i.e. the consequences of the breach of the obligation [SDC Advisory Opinion, para. 66]
- The Council has asked the Council has asked the Legal and Technical Commission (LTC) and the Secretariat to formulate a matrix of duties and responsibilities of the ISA and the sponsoring State.

# OVERVIEW: OBJECTIVES

- General Output:
  - Matrix of Responsibilities of the ISA & the Sponsoring State
  - Final Report
- Due at the beginning of June 2019 (really Alfonso!)
- For consideration by the LTC & Council for consideration in the development of the Exploitation Regulations?

# APPROACH

- **Step 1:** Identification of Responsibilities of ISA & Sponsoring State
- **Step 2:** Allocating these Responsibilities to Different Phases
  - General Responsibilities which apply throughout
  - Phase I: Prospecting
  - Phase II: Application Process
  - Phase III: Operations During Contract
  - Phase IV: Renewal of Contract
  - Phase V: Termination of Contract
- **Step 3:** Analysis in Terms of General Questions:
  - Are the responsibilities of the ISA & sponsoring State **complementary**?
  - Are the responsibilities of the ISA & sponsoring State **conflicting**?
  - Are the responsibilities of the ISA & sponsoring State creating **avoidable duplication of work**?
  - Are there issues in which there are **gaps** in current distributions of responsibilities between the ISA and the sponsoring State?

# APPROACH – QUESTIONS

- Ultimate objective is to determine **current** division of responsibilities between ISA & sponsoring States
- Should Final Report also propose recommendations on what should be the division of responsibilities between ISA & sponsoring States?
- Narrow it to flagging issues and making suggestions?

# APPROACH – QUESTIONS

- Ultimate objective is to determine **current** division of responsibilities between ISA & sponsoring States
- Should Final Report also propose recommendations on what **should be** the division of responsibilities between ISA & sponsoring States?
- Narrow it to flagging issues and making suggestions?

# APPROACH – SOURCES

	Source:
1.	UNCLOS
2.	Annex III, UNCLOS
3.	1994 Implementation Agreement
4.	2011 Advisory Opinion by the Seabed Disputes Chamber
5.	Consolidated Regulations and Recommendations on Prospecting & Exploration 2015 [Cobalt Crusts for present purposes]
6.	Draft Regulations on Exploitation of Mineral Resources in the Area prepared by LTC dated 25 March 2019

<https://cil.nus.edu.sg/cil-isa-workshop-on-the-role-of-the-sponsoring-state-in-deep-seabed-mining-12-13-april-2019-singapore/>

# APPROACH – SCHEDULE

<b>Session 3, Friday</b>	
13.30 – 15.00	<ul style="list-style-type: none"><li>• Mandate of the ISA</li><li>• General Responsibilities of the ISA &amp; Sponsoring State</li><li>• Vessels, Installations, Devices</li></ul>
<b>Session 4, Friday</b>	
15.30 – 17.00	<ul style="list-style-type: none"><li>• Phase I: Prospecting</li><li>• Phase II: Application Process</li></ul>



# APPROACH – SCHEDULE

	<b>Session 5, Sat</b>
0900 - 1030	<ul style="list-style-type: none"><li>• Phase III: Contract</li></ul>
	<b>Session 6, Sat</b>
1100 - 1230	<ul style="list-style-type: none"><li>• Phase III: Contract</li></ul>
	<b>Session 7, Sat</b>
1330 - 1500	<ul style="list-style-type: none"><li>• Phase IV: Renewal</li><li>• Phase V: Termination</li></ul>
	<b>Session 8, Sat</b>
1530 - 1700	<b>Developing the Matrix</b>

## SESSION 3

- **Mandate of the ISA & Sponsoring State**
- **General Responsibilities**
- **Vessels, Installations and Devices**

# MANDATE OF THE ISA



	Source:	Summarized Text
<b><u>Mandate</u></b>	Art. 153 (1)	Activities in the Area shall be organized, carried out and controlled by the ISA on behalf of mankind as a whole
	Art. 157 (1)	ISA is the organization through which States Parties shall organize and control activities in the Area with a view to administering resources of Area
<b><u>Powers:</u></b>	Art. 157 (1)	ISA has express powers conferred by UNCLOS & incidental powers as are implicit in and necessary for the exercise of those powers and functions
<b><u>Functions:</u></b>	Art. 157 (1)	Regulation of Activities in the Area (Deep Seabed Mining)
	Art. 145	Protection of Marine Environment from Harmful Effects of Activities in the Area
	Art. 143	Promotion of Marine Scientific Research in the Area & resources
	Art. 144	Promotion of Transfer of Technology & scientific knowledge
	Art. 160 (2)	Promotion of International co-operation on activities in the Area
	S. 8, 1994 IA	Development of payment mechanisms & financial terms of contracts
	Art. 140 (2)	Equitable sharing of benefits derived from activities in the Area
	Art. 82 (4)	Distribution of revenues from exploitation of outer CS

# MANDATE OF SPONSORING STATE

## Objective of Sponsorship

**To achieve the result that the obligations set out in UNCLOS, which only binds States Parties thereto, are complied with by entities that are subjects of domestic legal systems**

**SDC Advisory Opinion, para. 75**

**Sponsoring State contributes to “the realization of the common interest of all States in the proper application of the principle of the common heritage of mankind which requires faithful compliance with the obligations set out in Part XI**

**SDC Advisory Opinion, para. 76**

# MANDATE OF SPONSORING STATE

## Mandate

Sponsoring State has the responsibility to ensure that within their legal systems, that a sponsored contractor shall carry out activities in the Area in conformity with the terms of its contract and its obligations under UNCLOS

**Art. 139 (1)**  
**Art. 4 (4), Annex III**

Sponsoring State shall assist the ISA by taking all measures necessary to ensure such compliance in accordance with art. 139

**Art. 153 (4)**

Necessary and appropriate measures within its legal system to ensure that the Contractor complies with its obligations

**SDC AO, para. 22**

Consist of laws and regulations and administrative measures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction **(SDC AO, para. 218)**

# MANDATE OF SPONSORING STATE

**Scope & Extent of laws, regulations & administrative measures depend upon the legal system of SS but does not have absolute discretion**

Reasonably  
Appropriate

Need to act in  
good faith

Take into account  
relevant options in a  
manner that is  
reasonable, relevant  
and conducive to  
mankind as a whole

Reasonableness  
& Non-  
arbitrariness

# RELATIONSHIP BETWEEN ROLES OF ISA AND

A Subordinate Role?	Eliminating Avoidable Duplication of Work?
<p align="center"><b>SDC Advisory Opinion</b></p>	<p align="center"><b>SDC Advisory Opinion</b></p>
<p>Under Article 153 (4) of UNCLOS, the sponsoring State has the obligation to ‘assist’ the ISA and that this “<b>subordinate role</b> of the sponsoring State is reflected in Annex III, Article 22 of the Convention, in which the liability of the contractor and the Authority is mentioned while that of the sponsoring State is not [para. 30]</p>	<p>Laws, regulations and administrative measures may also provide for the co-ordination between the various activities of the sponsoring State and the ISA, “with a view to eliminating avoidable duplication of work [para. 218]</p>
<p>Main liability for a wrongful act committed in the conduct of the contractor’s operations or in the exercise of the ISA’s powers and functions rests with the contractor and the Authority, respectively, rather than with the sponsoring State.” This “reflects the distribution of responsibilities for deep seabed mining activities between the contractor, the Authority and the sponsoring State [para.218]</p>	<p align="center"><b>Reg. 3 (b), Draft Exploitation Regs</b></p> <p>The Authority, sponsoring States and flag States shall cooperate towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements.</p>

# QUESTIONS FOR DISCUSSION

- 1) Is the ISA the primary regulator and the sponsoring State the secondary regulator (based on its subordinate role)?
- 2) Is it necessary to even to make this clarification, or should it be decided on a case-by-case basis depending on the issue at hand and which actor has more control over the particular activity?
- 3) Are there any general principles that should govern the division of responsibilities between the ISA & sponsoring State



# APPLICATION PROCESS



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	Form of Application & Information
<b>Form:</b>	Application is done via a Plan of Work in Annex 1
<b>Submitted by:</b>	Submitted by States Parties (by an authority designated for that purpose); the Enterprise (the competent authority); State enterprise or other entity (by a designated representative, or by the authority designated for that purpose by the sponsoring State).
<b>Information on Nationality</b>	<ul style="list-style-type: none"><li>• Sufficient Information to determine nationality of applicant or identity of States by which, or by whose nationals, the applicant is effectively controlled</li><li>• The principal place of business or domicile and, if applicable, the place of registration of the applicant</li></ul>
<b>Certificate of sponsorship</b>	Each application by a State enterprise or one of the entities referred to in regulation 5 (1) (b) shall be accompanied by a certificate of sponsorship issued by the State of which it is a national or by whose nationals it is effectively controlled. If the applicant has more than one nationality, as in the case of a partnership or consortium of entities from more than one State, each State involved shall issue a certificate of sponsorship.
<b>Written Undertakings</b>	Regulation 7 (2) (a) – (d)
<b>Additional Documents</b>	Regulation 7 (3) (a) – (j)
<b>Area</b>	

# CERTIFICATE OF SPONSORSHIP



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## UNCLOS

Art. 153 (2) (b)

Non-State Contractors must:

- Either to possess the nationality of a State Party or to be effectively controlled by it or its nationals: and
- Be sponsored by such States

Article 4 (3) of  
Annex III

The criteria and procedures for implementation of the sponsorship requirements shall be set forth in the rules, regulations and procedures of the Authority.

# Certificate of sponsorship

## **Regulation 6**

### **Certificate of sponsorship**

1. Each application by a State enterprise or one of the entities referred to in regulation 5 (1) (b) shall be accompanied by a certificate of sponsorship issued by the State of which it is a national or by whose nationals it is effectively controlled. If the applicant has more than one nationality, as in the case of a partnership or consortium of entities from more than one State, each State involved shall issue a certificate of sponsorship.
2. Where an applicant has the nationality of one State but is effectively controlled by another State or its nationals, each State shall issue a certificate of sponsorship.

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#### **1 (Unedited Advance Text)**

3. Each certificate of sponsorship shall be duly signed on behalf of the State by which it is submitted, and shall contain:
  - (a) The name of the applicant;
  - (b) The name of the sponsoring State;
  - (c) A statement that the applicant is:
    - (i) A national of the sponsoring State; or
    - (ii) Subject to the effective control of the sponsoring State or its nationals;
  - (d) A statement by the sponsoring State that it sponsors the applicant;
  - (e) The date of deposit by the sponsoring State of its instrument of ratification of, or accession or succession to, the Convention, and the date on which it consented to be bound by the Agreement; and
  - (f) A declaration that the sponsoring State assumes responsibility in accordance with articles 139 and 153 (4) of the Convention and article 4 (4) of annex III to the Convention.
4. States or other qualified applicants in a joint arrangement with the Enterprise shall also comply with this regulation.

## **Regulation 7**

### **Form of applications and information to accompany a Plan of Work**

1. Each application for approval of a Plan of Work shall be in the form prescribed in annex I to these Regulations, shall be addressed to the Secretary-General and shall conform to the requirements of these Regulations.
2. Each applicant, including the Enterprise, shall, as part of its application, provide a written undertaking to the Authority that it will:
  - (a) Accept as enforceable and comply with the applicable obligations created by the provisions of Part XI of the Convention, the rules, regulations and procedures of the Authority, the decisions of the organs of the Authority and the terms of its contract with the Authority;
  - (b) Accept control by the Authority of activities in the Area, as authorized by the Convention;
  - (c) Provide the Authority with a written assurance that its obligations under its contract will be fulfilled in good faith; and
  - (d) Comply with the national laws, regulations and administrative measures of the sponsoring State or States made pursuant to articles 139 and 153 (4) of the Convention and article 4 (4) of annex III to the Convention.

# ADDITIONAL DOCUMENTS



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- Data and information acquired during the Exploration Contract;
- A Mining Workplan prepared in accordance with Annex II;
- A Financing Plan prepared in accordance with Annex III;
- An Environmental Impact Statement prepared in accordance with Regulation 47;
- An Emergency Response and Contingency Plan prepared in accordance with Annex VI;
- A Training Plan in accordance with Article 15 of Annex III of UNCLOS;
- An Environmental Management and Monitoring Plan prepared in accordance with Regulation 48;
- A Closure Plan prepared in accordance with Regulation 59 and Annex VIII to these regulations;
- An Application Processing Fee.

# PROCESSING & REVIEW OF APPLICATIONS

	Steps
Reg 9	Receipt, acknowledgement and safe custody of application
Reg 10	Preliminary Review of Application by Secretary-General
Reg 11	Publication and Review of the Environmental Plans for Stakeholder and LTC comments
Reg 13	Assessment of Applicants
Reg 14	Right of LTC to propose amendments to Plan of Work
Reg 15	Commission's recommendations for approval of works
Reg 16	Consideration and approval of work by Council

# ENVIRONMENTAL IMPACT ASSESSMENTS



ISA	Source	Description
Basis	S 1 (7) IA	An application for approval of a plan of work shall be accompanied by an assessment of the potential impacts of the proposed activities and by a description of a programme for oceanographic and baseline environmental studies in accordance with the rules, regulations and procedures adopted by the ISA.
Co—operation Obligation	DR 3 (e)	Contractors, sponsoring States and members of the Authority shall cooperate with the Authority in the establishment and implementation of programmes to observe, measure, evaluate and analyse the impacts of Exploitation on the Marine Environment, to share the findings and results of such programmes with the Authority for wider dissemination and to extend such cooperation and collaboration to the implementation and further development of Best Environmental Practices in connection with activities in the Area
General Principles	DR 44	the ISA, sponsoring State and the Contractor has to apply the precautionary approach; Best Available Techniques and Best Environmental Practices, integrate Best Available Scientific Evidence in environmental-decision-making, promote accountability and transparency in the assessment evaluation and management of Environmental Effects from Exploitation in the Area
Implementation	DR 46, 47, 59	Environmental Impact Statements, Environmental Management Plans, Closure Plans

# ENVIRONMENTAL IMPACT ASSESSMENTS

Environmental Plans	
Environmental Impact Statements (DR 47)	The purpose of the Environmental Impact Statement (EIS) is to document and report the results of the environmental impact assessment process (EIA process).
Environmental Management Plan (DR 48)	The purpose of an Environmental Monitoring and Management Plan is to manage and confirm that Environmental Effects meet the environmental quality objectives and standards for the mining operation. The plan will set out commitments and procedures on how the mitigation measures will be implemented, how the effectiveness of such measures will be monitored, what the management responses will be to the monitoring results and what reporting systems will be adopted and followed.
Closure Plan (DR 59)	A Closure Plan shall set out the responsibilities and actions of a Contractor for the decommissioning and closure of activities in a Mining Area, including the post-closure management and monitoring of residual and natural Environmental Effects. Closure also includes a temporary suspension of mining activities.



# ENVIRONMENTAL IMPACT ASSESSMENTS

## Reviewing Process

1. Publication of Environmental Plans by SG for comments by Members of the Authority & Stakeholders
2. SG requests LTC to provide comments
3. SG provides comments submitted by Members of the ISA, Stakeholders, the LTC, and comments by the SG to applicant
4. Applicant shall consider comments and may revise Environmental Plans or provide comments
5. LTC to examine the Environmental Plans or revised plans in light of all comments, response by applicant and any additional information provided
6. The Commission shall prepare a report on the Environmental Plans. The report shall include details of the Commission's determination under regulation 13(4)(e) as well as a summary of the comments or responses made under regulation 11(2). The report shall also include any amendments or modifications to the Environmental Plans recommended by the Commission under regulation 14. Such report on the Environmental Plans or revised plans shall be published on the Authority's website and shall be included as part of the reports and recommendations to the Council pursuant to regulation 15.

# ENVIRONMENTAL IMPACT ASSESSMENTS



Sponsoring State	Source	Description
Basis	Art 204	Monitoring of the Risks or Effects of Pollution
	Art 205	Publication of Reports
	Art 206	Assessment of Potential Effects of Activities
	SDC AO	Direct obligation & an obligation to apply due diligence
Co—operation Obligation	DR 3 (e)	Contractors, sponsoring States and members of the Authority shall cooperate with the Authority in the establishment and implementation of programmes to observe, measure, evaluate and analyse the impacts of Exploitation on the Marine Environment, to share the findings and results of such programmes with the Authority for wider dissemination and to extend such cooperation and collaboration to the implementation and further development of Best Environmental Practices in connection with activities in the Area
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Implementation		?????

# ENVIRONMENTAL IMPACT ASSESSMENTS

1. What are the responsibilities of the sponsoring State during the application phase?
2. Should these responsibilities be reflected in the Exploitation Regulations?
3. With regard to EIAs, EIS, Environmental Management Plans, how can the sponsoring State fulfil its obligations but not impose avoidable or unnecessary duplicate requirements on the Contractor?
  - The SS reviews the EIA, EIS, EMP and it is made a condition of sponsorship? Contractor going through 2 reviews? Avoidable Duplication?
  - How can the SS fulfill transparency requirements? 2 separate public consultation processes? Avoidable duplication?
4. What happens if the sponsoring State disagrees with the LTC's comments or recommendation?

# CHANGES IN TERMS OF CONTRACT – CONSENT OF SPONSORING STATE

## **Regulation 22**

### **Use of exploitation contract as security**

1. The Contractor may, with the prior consent of the sponsoring State or States and of the Council, based on the recommendations of the Commission, mortgage, pledge, lien, charge or otherwise encumber all or part of its interest under an exploitation contract for the purpose of raising financing to effect its obligations under an exploitation contract.

## **Regulation 23**

### **Transfer of rights and obligations under an exploitation contract**

1. A Contractor may transfer its rights and obligations under an exploitation contract in whole or in part only with the prior consent of the Council, based on the recommendations of the Commission.

2. An application for consent to transfer the rights and obligations under an exploitation contract shall be made to the Secretary-General jointly by the Contractor and transferee.

3. The Commission shall consider the application for consent to transfer at its next available meeting, provided that the documentation has been circulated at least 30 Days prior to that meeting.

4. The Commission shall consider whether the transferee:

- (a) Meets the requirements of a qualified applicant as set out in regulation 5;
- (b) Has submitted a certificate of sponsorship as set out in regulation 6;

# CHANGES IN TERMS OF CONTRACT – CONSENT OF SPONSORING STATE

## **Regulation 24**

### **Change of control**

1. For the purposes of this regulation, a “change in control” occurs where there is a change in 50 per cent or more of the ownership of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, or a change in 50 per cent or more of the ownership of the entity providing an Environmental Performance Guarantee.
2. Where there is a change of control of the Contractor, or there is a change of control in any entity providing an Environmental Performance Guarantee on behalf of a Contractor, the Contractor shall, where practicable, notify the Secretary-General in advance of such change of control, but in any event within 90 Days thereafter. The Contractor shall provide the Secretary-General with such details as he or she shall reasonably request of the change of control.
3. After consulting the Contractor or entity providing the Environmental Performance Guarantee, as the case may be, the Secretary-General may:

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### **2.1 (Unedited Advance Text)**

- (a) Determine that, following a change of control of the Contractor or the entity providing the Environmental Performance Guarantee, the Contractor will continue to be able, and in particular will have the financial capability, to meet its obligations under the exploitation contract or Environmental Performance Guarantee, in which case the contract shall continue to have full force and effect; or
  - (b) In the case of a Contractor, treat a change of control as a transfer of rights and obligations in accordance with the requirements of these Regulations, in which case regulation 23 shall apply; or
  - (c) In the case of an entity providing an Environmental Performance Guarantee, require the Contractor to lodge a new Environmental Performance Guarantee in accordance with regulation 26, within such time frame as the Secretary-General shall stipulate.
4. Where the Secretary-General determines that following a change of control, a Contractor may not have the financial capability to meet its obligations under its exploitation contract, the Secretary-General shall inform the Commission accordingly. The Commission shall make a report of its findings and recommendations to the Council.

# OBLIGATIONS OF NOTIFICATION

## **Regulation 4**

### **Protection measures in respect of coastal States**

1. Nothing in these Regulations affects the rights of coastal States in accordance with article 142 and other relevant provisions of the Convention.
2. Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause Serious Harm to the Marine Environment, including, but not restricted to, pollution, under the jurisdiction or sovereignty of coastal States, and that such Serious Harm or pollution arising from Incidents in its Contract Area does not spread into areas under the jurisdiction or sovereignty of a coastal State.
3. Any coastal State which has grounds for believing that any activity under a Plan of Work in the Area by a Contractor is likely to cause Serious Harm or a threat of Serious Harm to its coastline or to the Marine Environment under its jurisdiction

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### **WP.1 (Unedited Advance Text)**

or sovereignty may notify the Secretary-General in writing of the grounds upon which such belief is based. The Secretary-General shall immediately inform the Commission, the Contractor and its sponsoring State or States of such notification. The Contractor and its sponsoring State or States shall be provided with a reasonable opportunity to examine the evidence, if any, and submit their observations thereon to the Secretary-General within a reasonable time.

4. If the Commission determines, taking account of the relevant Guidelines, that there are clear grounds for believing that Serious Harm to the Marine Environment is likely to occur, it shall recommend that the Council issue an emergency order pursuant to article 165(2)(k) of the Convention.

5. If the Commission determines that the Serious Harm or threat of Serious Harm to the Marine Environment, which is likely to occur or has occurred, is attributable to the breach by the Contractor of the terms and conditions of its exploitation contract, the Secretary-General shall issue a compliance notice pursuant to regulation 103 or direct an inspection of the Contractor's activities pursuant to article 165 (2) (m) and part XI of these Regulations.



# OBLIGATIONS OF NOTIFICATION



## Regulation 33

### Preventing and responding to Incidents

1. The Contractor shall not proceed or continue with Exploitation if it is reasonably foreseeable that proceeding or continuing would cause or contribute to an Incident, or prevent the effective management of such Incident.
2. The Contractor shall, upon becoming aware of an Incident:
  - (a) Notify its sponsoring State or States and the Secretary-General immediately, but no later than 24 hours from the incident occurring;
  - (b) Immediately implement, where applicable, the Emergency Response and Contingency Plan approved by the Authority for responding to the Incident;
  - (c) Undertake promptly, and within such timeframe stipulated, any instructions received from the Secretary-General in consultation with the sponsoring State or States, flag State, coastal State or relevant international organizations, as the case may be;
  - (d) Take any other measures necessary in the circumstances to limit the adverse effects of the Incident; and

## Regulation 34

### Notifiable events

1. A Contractor shall immediately notify its sponsoring State or States and the Secretary-General of the happening of any of the events listed in appendix I to these Regulations.
2. The Contractor shall, as soon as reasonably practicable, but no later than 24 hours after the Contractor becomes aware of any such event, provide written notification to the Secretary-General of the event, including a description of the event, the immediate response action taken (including, if appropriate, a statement regarding the implementation of an Emergency Response and Contingency Plan) and any planned action to be taken.
3. The Secretary-General shall consult with the sponsoring State or States and other regulatory authorities as necessary.
4. The Contractor shall ensure that all regulatory authorities are notified and consulted, as appropriate.
5. Where a complaint is made to a Contractor concerning a matter covered by these Regulations, the Contractor shall record the complaint and shall report it to the Secretary-General within 7 Days of the complaint being received.

## Regulation 35

### Human remains and objects and sites of an archaeological or historical nature

The Contractor shall immediately notify the Secretary-General in writing of any finding in the Contract Area of any human remains of an archaeological or historical nature, or any object or site of a similar nature, and its location, including the preservation and protection measures taken. The Secretary-General shall transmit such information to the sponsoring State, to the State from which the remains originated, if known, to the Director General of the United Nations Educational, Scientific and Cultural Organization and to any other competent international organization. Following the finding of any such human remains, object or site in the Contract Area, and in order to avoid disturbing such human remains, object or site, no further Exploration or Exploitation shall take place, within a reasonable radius, until such time as the Council decides otherwise, after taking into account the views of the State from which the remains originated, the Director General of the United Nations Educational, Scientific and Cultural Organization or any other competent international organization.

### .1 (Unedited Advance Text)

- (e) Record the Incident in the Incidents Register, which is a register to be maintained by the Contractor on board a mining vessel or Installation to record any Incidents or notifiable events under regulation 34.
3. The Secretary-General shall report any Contractor that fails to comply with this regulation to its sponsoring State or States and the flag State of any vessel involved in the Incident for consideration of the institution of legal proceedings under national law.
4. The Secretary-General shall report such Incidents, and measures taken to the Commission and the Council at their next available meeting.

## **Regulation 37**

### **Training Plan**

1. The Contractor shall conduct and carry out the training of personnel of the Authority and developing States on an ongoing basis in accordance with the approved Training Plan commitment under schedule 8 to the exploitation contract, these Regulations and any training Guidelines.
2. The Contractor, the Authority and the sponsoring State or States may, from time to time, as necessary, revise and develop the Training Plan by mutual agreement, taking into account the shortage of any skills and requirements of the industry in the undertaking of activities in the Area and the training Guidelines.
3. Any mutually agreed modification of or amendment to the Training Plan shall become part of schedule 8 to the exploitation contract.



# MONITORING OBLIGATIONS



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Regulation 38	Annual Report
Regulation 51	Compliance with the Environmental Management and Monitoring Plan
Regulation 52	Performance Assessments
Regulation 58	Review of Activities under a Plan of Work

# MONITORING OBLIGATIONS



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# RECORDS, INSPECTION & AUDIT



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## Regulation 75

### Audit and inspection by the Authority

1. The Secretary-General may audit the Contractor's records.
2. Any such audit shall be undertaken at the Authority's sole cost and shall be performed by an Inspector in accordance with Part XI of these Regulations.
3. An Inspector may, in connection with a liability for a royalty payment:
  - (a) Inspect the mining and on-board processing facility with a view to verifying the accuracy of the equipment measuring the quantity of Mineral ore sold or removed without sale from the Contract Area;
  - (b) Inspect, audit and examine any documents, papers, records and data available at the Contractor's offices or on-board any mining vessel or Installation;

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### ISBA/25/C/WP.1 (Unedited)

- (c) Require any duly authorized representative of the Contractor to answer any questions in connection with the inspection; and
  - (d) Make and retain copies or extracts of any documents or records relevant to the subject matter of the inspection and provide a Contractor with a list of such copies or extracts.
4. The Contractor shall make available to an Inspector such financial records and information contemplated as reasonably required by the Secretary-General to determine compliance with this Part.
5. Members of the Authority, in particular a sponsoring State or States, shall, to the best of their abilities, cooperate with and assist the Secretary-General and any Inspector in the carrying out of any audit under this regulation, and shall facilitate access to the records of a Contractor by an Inspector and assist in the exchange of information relevant to a Contractor's obligations under this Part.

# ENFORCEMENT & PENALTIES



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## **Regulation 80 Monetary penalties**

Subject to regulation 103 (6), the Council may impose a monetary penalty in respect of a violation under this Part.

## **Appendix III**

### **Monetary penalties**

**This appendix is no longer referenced in these draft regulations. Monetary penalties referenced in regulations 80 and 103(6) to be imposed by the Council, should be set out in a Council decision, which would be subject to review from time to time.**

#### **Prescribed amount (United States dollars)**

Penalty in respect of any underdeclaration or underpayment in respect of a royalty	[ ]
Penalty in respect of any failure to deliver or furnish a royalty return	[ ]
Penalty in respect of false royalty returns and information	[ ]
Failure to submit an annual report (regulation 38)	[ ]

*Other: to be considered e.g. relating to notifiable events (failure to notify); environmental & other Incidents; not achieving/exceeding environmental thresholds. A desktop study should be performed in connection with monetary penalties under comparable national regimes for extractive industries, including those relating to a broader range of breaches of the environmental provisions and failure to adhere to the Plan of Work annexed to an exploitation contract.*



# ENFORCEMENT & PENALTIES



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## Section 3 Enforcement and penalties

### Regulation 103

#### Compliance notice and termination of exploitation contract

1. At any time, if it appears to the Secretary-General on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, the Secretary-General shall issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice.
2. A compliance notice shall:
  - (a) Describe the alleged breach and the factual basis for it; and
  - (b) Require the Contractor to take remedial action or other such steps as the Secretary-General considers appropriate to ensure compliance within a specified time period.
3. For the purposes of article 18 of annex III to the Convention, a compliance notice issued under this regulation constitutes a warning by the Authority.
4. The Contractor shall be given a reasonable opportunity to make representations in writing to the Secretary-General concerning any aspect of the compliance notice. Having considered the representations, the Secretary-General may confirm, modify or withdraw the compliance notice.
5. If a Contractor, in spite of warnings by the Authority, fails to implement the measures as set out in a compliance notice and continues its activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the contract, Part XI of the Convention and the rules, regulations and procedures of the Authority, the Council may suspend or terminate the exploitation contract by providing written notice of suspension or termination to the Contractor in accordance with the terms of the exploitation contract.
6. In the case of any violation of an exploitation contract, or in lieu of suspension or termination under paragraph 5 above, the Council may impose upon a Contractor monetary penalties proportionate to the seriousness of the violation.
7. Save for emergency orders under article 162 (2) (w) of the Convention, the Council may not execute a decision involving monetary penalties, suspension or termination until the Contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to it pursuant to section 5 of Part XI to the Convention.

### Regulation 104

#### Power to take remedial action

1. Where a Contractor fails to take action required under regulation 103, the Authority may carry out any remedial works or take such measures as it considers reasonably necessary to prevent or Mitigate the effects or potential effects of a Contractor's failure to comply with the terms and conditions of an exploitation contract.
2. If the Authority takes remedial action or measures under paragraph 1 above, the actual and reasonable costs and expenses incurred by the Authority in taking that action are a debt due to the Authority from the Contractor, and may be recovered from the Environmental Performance Guarantee lodged by the Contractor.

# TERMINATION OF SPONSORSHIP



CENTRE FOR INTERNATIONAL LAW  
National University of Singapore

## **Regulation 21** **Termination of sponsorship**

1. Each Contractor shall ensure it is sponsored by a sponsoring State or States, as the case may be, throughout the period of the exploitation contract in accordance with regulation 6, and to the extent necessary to comply with regulations 6(1) and (2).
2. A State may terminate its sponsorship by providing to the Secretary-General a written notice describing the reasons for terminating its sponsorship. Termination of sponsorship takes effect no later than 12 months after the date of receipt of the notification by the Secretary-General, save that where such termination is due to a Contractor's non-compliance under its terms of sponsorship, termination of sponsorship shall take effect no later than 6 months after the date of such notification.
3. In the event of termination of sponsorship, the Contractor shall, within the period referred to in paragraph 2 above, obtain another sponsoring State or States in accordance with the requirements of regulation 6, and in particular in order to comply with regulation 6 (1) and (2). Such State or States shall submit a certificate of sponsorship in accordance with regulation 6. The exploitation contract terminates automatically if the Contractor fails to obtain a sponsoring State or States within the required period.
4. A sponsoring State or States is not discharged from any obligations accrued while it was a sponsoring State by reason of the termination of its sponsorship, nor shall such termination affect any legal rights and obligations created during such sponsorship.
5. The Secretary-General shall notify the members of the Authority of a termination or change of sponsorship.
6. After a sponsoring State has given a written notice in accordance with paragraph 2 above, the Council, based on the recommendations of the Commission which shall take account of the reasons for the termination of sponsorship, may require the Contractor to suspend its mining operations until such time as a new certificate of sponsorship is submitted.