

# The role of a Sponsoring State

## A perspective from a Small Island Developing State

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In Deep Seabed Mining

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# OVERVIEW

1. TONGA AND TONGA OFFSHORE MINING LIMITED
2. LEGAL ARCHITECTURE FOR THE ROLE OF SPONSORING STATES
3. KEY CONSIDERATIONS FOR SMALL ISLAND DEVELOPING STATES

# 1. TONGA AND TONGA OFFSHORE MINING LIMITED

- Tonga is an archipelago of 174 islands scattered across 700,000 sq.km of the South Pacific Ocean, over which Tonga holds sovereign rights and jurisdiction.
- In 2008:
  - Tonga entered into a sponsorship arrangement with the company Tonga Offshore Mining Limited.
  - Tonga sponsored TOML lodged an application for a contract for exploration for polymetallic nodules in the Clarion-Clipperton Fracture Zone.
- In 2011, after the advisory opinion was delivered, the Council approved the application and granted TOML a 15 year contract for exploration which is expected to expire on the 10<sup>th</sup> of January 2027.

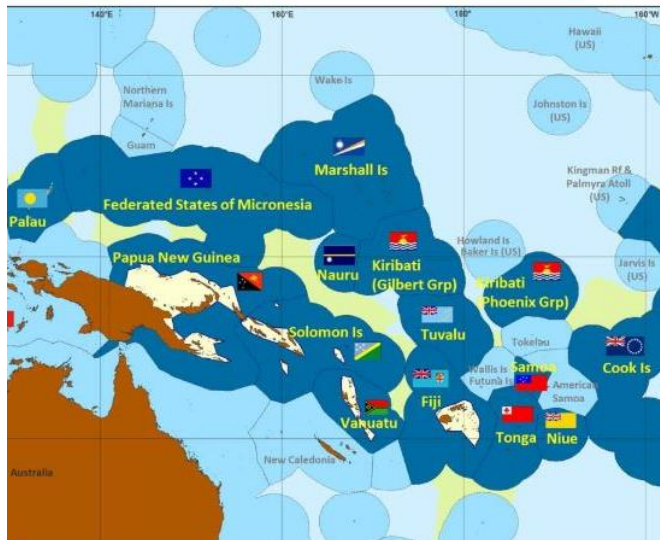
# 1. TONGA AND TONGA OFFSHORE MINING LIMITED

## the SPC- EU Deep Sea Minerals Project

is a collaboration between the Pacific Community (SPC) and the European Union (EU).

The DSM Project is helping Pacific Island countries to improve the governance and management of their deep-sea minerals resources in accordance with equitable financial arrangements for Pacific Island countries and their people.

Member Pacific Island Countries: the Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea



1. Post-2011 advisory opinion Tonga realized the need for a stand-alone legislative framework for seabed mining
2. EU-SPC Project assisted Tonga in developing:
  - Regulatory framework for seabed mining;
  - Building of relevant capacities

## 2. LEGAL ARCHITECTURE FOR THE ROLE OF SPONSORING STATES



Due Diligence



Direct Obligations

## 2. LEGAL ARCHITECTURE FOR THE ROLE OF SPONSORING STATES

### 1. The application phase;

- a) Domestic laws and administration measures in force in the jurisdiction of Sponsoring States embodying both due diligence and direct obligations. These however should evolve and adapt as standards, rules and guidelines set by the ISA continue to develop.
- b) The sponsoring state must satisfy itself as to the Contractor having the necessary technical and financial resources to undertake the project;
- c) In lodging the application, Sponsoring States are required to provide a certificate of sponsorship containing:
  - a statement that it sponsors the applicant;
  - statement of the relevant domestic legislation in place ; and
  - 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.*"

## 2. LEGAL ARCHITECTURE FOR THE ROLE OF SPONSORING STATES

2. The contract phase will require the following four which are:

- a) The ongoing monitoring of the Contractors compliance; (e.g monitoring and reporting)
- b) The ongoing assistance and cooperation with the Authority;
- c) Active engagement in the sessions of the Authority to be kept abreast of engagements.
- d) Perhaps also considering consent to an intention by contractor to encumber all or part of its interests under the contract

## 2. LEGAL ARCHITECTURE FOR THE ROLE OF SPONSORING STATES

### 3. Termination and renewal;

- a) The Sponsoring State has an unqualified right to terminate the sponsorship;
- b) A sponsoring state should be consulted in light of any decision to renew or extend a contract for exploration or exploitation to ensure sponsorship continues for the duration of the extension or renewal;
- c) In the event of the contract being terminated, on the issue of liability, a Sponsoring Party shall remain – (a) subject to any ongoing obligations, including requirements to submit reports and to make payments to the Authority and the ISA; and (b) responsible for any liability arising from its Seabed Minerals Activities;



# 3. KEY CONSIDERATIONS FOR SMALL ISLAND DEVELOPING STATES

1. Legal Architecture sets the minimum thresholds;
2. Dichotomy of interests, capabilities, capacities, challenges, interpretations, aspirations, etc, between and amongst the membership.
3. Need to ensure responsibilities which are fair, equitable, and balanced for sponsoring states on the one side, and the Authority on the other, as well, as fair, equitable, and balanced amongst the sponsoring states themselves.
4. Capacity building and technology transfer essential for small island developing states.
5. Voluntary Trust Fund plays a key role in ensuring the participation of SIDS

# CONCLUSION

- What amounts to being an appropriate responsibility for sponsoring states given the differences in capacity, wherewithal, capability, and so forth between them.
- This minimum threshold must reflect a balance in responsibilities which is fair and equitable to all sponsoring states as well as to the Authority;
- Questions to consider:
  - What actions are necessary for sponsoring states to ensure that the obligation of *due diligence* and *direct obligations* are deemed to amount to what can be called *full compliance*?
  - Although evident that the standards apply equally to both developed and developing states, there perhaps may be question as, to what extent?
  - Are legal and administrative measures, which are deemed to be robust in the context of a small island developing State, sufficient?