



REPUBLIC OF NAURU

# International Seabed Minerals Act 2015

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No. 26 of 2015

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An Act to govern Nauru's engagement in Seabed Mineral Activities in the Area beyond national jurisdiction and the associated administrative functions of the Republic

Certified: 23 October 2015

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Enacted by the Parliament of Nauru as follows:

## **PART 1 - PRELIMINARY**

### **1 Short title**

This Act may be cited as the *International Seabed Minerals Act 2015*.

### **2 Commencement**

This Act shall come into force on the date on which it is certified by the Speaker.

### **3 Parts**

This Act is divided into Parts as follows:

PART 1 – Preliminary

PART 2 – Nauru Seabed Minerals Authority

PART 3 – Sponsorship Application and Application to the ISA

PART 4 – Obligations pertaining to the Conduct of Seabed Mineral Activities

PART 5 – Role of Nauru as a Sponsoring State

PART 6 – Registration, Termination and Extension of Sponsorship

PART 7 – Fiscal Arrangements

PART 8 - Miscellaneous

### **4 Interpretation**

(1) In this Act, unless the context otherwise requires:

**‘Contract Area’** means any part of the Area in respect of which there is in force a contract between a Sponsored Party and the ISA for the conduct of Seabed Mineral Activities;

**‘Department’** means the Department responsible for the administration of this law;

**‘Exploitation’** means the recovery of Seabed Minerals and the extraction of minerals, including the construction and operation of all mining, processing and transportation systems for the production and marketing of metals, in the Area;

**‘Exploration’** means the:

- (a) search for deposits of Seabed Minerals with exclusive rights;
- (b) analysis of such deposits;
- (c) use and testing of recovery systems and equipment, processing facilities and transportation systems in the Area; and
- (d) carrying out of studies of the environmental, technical, economic, commercial and other appropriate factors that must be taken into account in Exploitation;

An **'Incident'** occurs when:

- (a) any ship or installation or other similar item or structure while engaged in Seabed Mineral Activities is lost, abandoned, capsized or incurs significant damage; or
- (b) loss of life or injury requiring hospitalisation occurs on board any ship or installation while engaged in Seabed Mineral Activities, except in the case of a loss of life that is certified by an independent medical practitioner as being the result of natural causes; or
- (c) the conduct of Seabed Mineral Activities results in significant unanticipated or unlawful adverse impact to or pollution of the Marine Environment; or
- (d) the International Seabed Authority issues an emergency order in connection with the Seabed Mineral Activities;

**'International Seabed Authority'** or **'ISA'** means the International Seabed Authority established by Part XI, section 4 of the United Nations Convention on the Law of the Sea (UNCLOS) as the organisation through which State Parties shall organise and control Seabed Mineral Activities in the Area;

**'Marine Environment'** means the environment of the sea, and includes the physical, chemical, geological and genetic components, conditions and factors which interact and determine the productivity, state, condition and quality of the marine ecosystem, the waters of the seas and oceans and the airspace above those waters, as well as the seabed and ocean floor and subsoil thereof;

**'Marine Scientific Research'** means any lawful study, research or other related scientific activity within the Area whether fundamental or applied, intended to increase knowledge about the Marine Environment for the benefit of all mankind, and not undertaken directly for industrial or economic purposes and not significantly altering the surface or subsurface of the seabed nor significantly affecting the Marine Environment;

**'Minister'** means the Minister responsible for the administration of this law;

**'Nauru Seabed Minerals Authority'** or **'the Authority'** means the body established under Part 2 of this Act to administer Nauru's sponsorship of Seabed Mineral Activities;

**'person'** includes any natural person or business enterprise and includes but is not limited to, a corporation, partnership, cooperative, association, the Republic or any subdivision or agency, and any foreign State, subdivision or agency of such State or other entity;

**'Precautionary Principle'** means that, in order to protect the environment, where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;

**'Prescribed'** means prescribed by Regulations or other subsidiary legislation made under this Act;

**'Qualification Criteria'** means the criteria that must be met before a Sponsorship Certificate can be issued, as stipulated in section 23 of this Act;

**'Regulations'** means regulations made under this Act;

**'Rules of the ISA'** means any rules, regulations, or procedures adopted by the ISA pursuant to powers conferred on the ISA by the UNCLOS, which are from time to time in force, and any contractual terms contained in a contract between the ISA and a Sponsored Party relating to Seabed Mineral Activities;

**'Seabed Mineral Activities'** means operations for the Exploration or Exploitation of Seabed Minerals within the Area under contract with the ISA under Nauru's sponsorship under this Act;

**'Seabed Minerals'** means hard mineral resources, consisting of any deposit or accretion, on or just below the surface of the deep seabed in the Area, including those in crust, nodule or hydrothermal deposit form, which contain metalliferous elements;

**'Sponsored Party'** means a person who holds a current Sponsorship Certificate validly issued under Part 3 of this Act, that person's representatives or officers, and any person or persons to whom the Sponsorship Certificate may lawfully have been assigned;

**'Sponsorship Applicant'** means a person applying for a Sponsorship Certificate under this Act;

**'Sponsorship Application'** means an Application made by a person for a Sponsorship Certificate under this Act;

**'Sponsorship Certificate'** means a certificate validly issued by Nauru under Part 3 of this Act;

**'Sponsoring State'** means a State Party to the UNCLOS, sponsoring a person to carry out Exploration or Exploitation in the accordance with Article 153(2) (b) of the UNCLOS;

**'State Party'** means a State which has consented to be bound by the UNCLOS;

**'The Area'** means the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction, as defined in Article 1(1) of the UNCLOS;

**'The United Nations Convention on the Law of the Sea (UNCLOS)'** means the United Nations Convention on the Law of the Sea of 10 December 1982 entered into force on 16 November 1994; the 1994 Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, and any Annexes thereto.

(2) Unless a contrary intention appears, words and expressions used in this Act are accorded the same meaning used in the UNCLOS and in the Rules of the ISA.

## **5 Scope of this Act**

(1) The objectives of this Act are:

- (a) to establish a legal framework for the sponsorship, and for the effective control, by Nauru of contractors to undertake Seabed Mineral Activities in the Area;
- (b) to provide that Seabed Mineral Activities under Nauru's sponsorship in the Area must be carried out under Nauru's effective control in accordance with best international practice, and in a manner that is consistent with internationally accepted rules, standards, principles and practices, including Nauru's responsibilities under the UNCLOS and specifically Nauru's duty to protect and preserve the Marine Environment;
- (c) to promote transparency in decision making on matters concerning Nauru's management of Seabed Mineral Activities;
- (d) to provide a stable, transparent and predictable regulatory environment for investors in Seabed Mineral Activities;
- (e) to secure optimum benefits, long term-economic growth and sustainable development for Nauru from the development of its Seabed Mineral sector;



- (f) to implement measures to maximise the benefits of Seabed Mineral Activities for present and future generations.
- (2) In order to achieve its objectives, this Act *inter alia*:
- (a) creates a regulatory system and designates a responsible Authority to licence, monitor and manage Nauru's involvement with Seabed Mineral Activities;
  - (b) establishes a system for Sponsorship Applications, and the grant of Sponsorships Certificates under which Sponsored Parties will be authorised to engage in Seabed Mineral Activities under specific and enforceable conditions;
  - (c) provides for Nauru to receive payments for its Sponsorship of Seabed Mineral Activities, and for a ring-fenced Seabed Minerals Fund for the responsible long-term management of any funds raised by Nauru from Seabed Mineral Activities.
- (3) This Act is made on the basis that the Rules of the ISA and the ISA's monitoring and enforcement capacity will be developed in an appropriate and timely manner for the purpose of securing that Seabed Mineral Activities will comply with relevant standards and obligations of international law.

## **6 Jurisdiction**

By the enactment of this Act, Nauru recognises:

- (a) the seabed resources of the Area to be the common heritage of mankind;
- (b) that the rights to the Area are governed by the UNCLOS and the Rules of the ISA;
- (c) the ISA's responsibility under the UNCLOS to organise and control activities in the Area on behalf of mankind as a whole, including:
  - (i) processing applications for approval of plans of work for Exploration and Exploitation;
  - (ii) monitoring compliance with plans of work approved in the form of a contract, including through a staff of inspectors;
  - (iii) adopting rules, regulations and procedures necessary for the conduct of Exploration and Exploitation; and
- (d) the rules, regulations, procedures, codes and standards adopted by the ISA for the:

- (i) protection and preservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the Marine Environment;
  - (ii) preservation, reduction and control of pollution and other hazards to, and the interference with the ecological balance of the Marine Environment;
  - (iii) exercise of control over activities in the Area as is necessary for the purpose of securing compliance with the UNCLOS and the Rules of the ISA by contractors carrying out activities in the Area; and
- (e) the responsibility of State Parties to assist the ISA in exercising the duty outlined in section 6(d)(iii) of this Act;
- (f) that Seabed Mineral Activities shall be carried out in association with the ISA only by:
- (i) State Parties; or
  - (ii) persons sponsored by State Parties; and
- (g) where Nauru is a Sponsoring State, the State's duty includes the effective control of any person engaged in activities in the Area under its sponsorship, in order to ensure conformity of those activities with the UNCLOS and the Rules of the ISA.

## **PART 2 – NAURU SEABED MINERALS AUTHORITY**

### **7 Establishment of the Nauru Seabed Minerals Authority**

- (1) There is established an authority to be known as the Nauru Seabed Minerals Authority.
- (2) The Authority shall be a body corporate with perpetual succession and a common seal, and may:
- (a) sue and be sued;
  - (b) acquire, hold and dispose of property;
  - (c) enter into any contract, agreement, or any other transaction; and
  - (d) do all other acts that may be done in law by a body corporate.

### **8 Composition of the Authority**

- (1) The Authority consists of the following or their nominees who shall serve in an *ex officio* capacity:

- (a) Secretary for Foreign Affairs and Trade as the Chairperson and head of the Authority;
  - (b) Chief Secretary;
  - (c) Secretary for Justice and Border Control;
  - (d) Secretary for Commerce, Industry and Environment; and
  - (e) Secretary for Cabinet who shall serve as secretary for the Authority.
- (2) The Authority may appoint a Chief Executive Officer and other staff as it determines expedient for the implementation of this Act, on terms and conditions of service as the Authority may determine with the approval of Cabinet.

## **9 Sponsorship Duties**

Where Nauru sponsors a third party to conduct Seabed Minerals Activities under Part 3 of this Act, the Authority shall:

- (a) on behalf of Nauru, be responsible for Nauru's sponsorship of Seabed Minerals Activities;
- (b) with the approval of Cabinet, have all reasonable powers required for the performance of any of its functions, including a power to delegate administrative functions; and
- (c) report to Parliament through the Minister.

## **10 Objectives of the Authority**

The Authority must:

- (a) provide a stable, transparent, predictable and accountable regime within Nauru for the sponsorship and supervision of Seabed Mineral Activities;
- (b) maintain effective control of Seabed Mineral Activities undertaken under this Act and the protection and preservation of the Marine Environment;
- (c) ensure compliance by Sponsored Parties or any sub-contractors engaged by the State or Sponsored Parties in relation to Seabed Mineral Activities with relevant rules and internationally agreed standards;
- (d) maximise the economic and development benefits from Seabed Mineral Activities for Nauru and its people;

- (e) in its decision-making, take into account any recommendations arising from consultation under section 17 of this Act or from Cabinet; and
- (f) act in a way that is compatible with principles of best regulatory practice, including that regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases where needed.

## **11 Functions of the Authority**

- (1) The functions of the Authority are to:
- (a) develop policies and institutional arrangements for the purpose of regulating and monitoring the development of the Nauruan Seabed Minerals sector;
  - (b) develop standards and guidelines for Seabed Mineral Activities, and provide advice and guidance in relation to applications, Seabed Mineral Activities and associated matters;
  - (c) conduct due diligence enquiries into Sponsorship Applicants or Sponsored Parties;
  - (d) receive and evaluate Sponsorship Applications;
  - (e) recommend to Cabinet whether Seabed Mineral Activities are to be permitted or not, and if permitted, on what terms;
  - (f) if approved by Cabinet, prepare and issue Certificates of Sponsorship for successful Sponsorship Applicants;
  - (g) liaise with the ISA and any other relevant international organisations to facilitate a Sponsored Party's application to the ISA for a contract;
  - (h) maintain Nauru's and its Sponsored Parties' understanding of and compliance with international laws, standards and rules relevant to Seabed Mineral Activities;
  - (i) assist the ISA in its work to establish, monitor, implement and secure compliance with the Rules of the ISA;
  - (j) undertake any advisory, supervisory or enforcement activities in relation to Seabed Mineral Activities or the protection of the Marine Environment, insofar as this is required in addition to the ISA's work in order for Nauru to meet its obligations under the UNCLOS as a Sponsoring State;
  - (k) require and review relevant reports and information, and maintain appropriate records, pertaining to Seabed Mineral Activities;

- (l) with Cabinet approval, establish contractual arrangements with any parties sub-contracted by Nauru to carry out aspects of Seabed Mineral Activities, and ensure the terms and conditions of those contracts will hold the contractor to necessary standards to ensure compliance with the Rules of the ISA;
  - (m) insofar as they are not prescribed by law, negotiate financial terms in respect of Seabed Mineral Activities with Sponsored Parties and other parties engaged in Seabed Mineral Activities;
  - (n) seek expert advice on factual matters pertaining to the administration of this Act and concerning the management of Nauru's Seabed Mineral Activities including but not limited to advice on economic, legal, scientific, technical matters and the management and conservation of the Marine Environment, including from experts outside of the country.
- (2) The Cabinet may give directions, not inconsistent with the provisions of this Act, the Rules of the ISA and the UNCLOS, as to the performance of functions and duties by the Authority.

## **12 Powers of the Authority**

- (1) The Authority has statutory authority to undertake reasonable action calculated to facilitate, or that is conducive or incidental to, the performance of any of its functions or duties.
- (2) Despite subsection (1), any negotiation, contract, agreement or other transaction that binds the Republic and is entered into by the Authority without Cabinet approval, is void.

## **13 Delegation of powers**

- (1) The Authority may, from time to time, in writing, delegate its powers and functions under this Act to any person, committee or working group.
- (2) A delegation may be made subject to such terms and conditions as the Authority thinks fit, and may be made either generally or in relation to particular circumstances.
- (3) Any person, committee or working group purporting to exercise any power of the Authority by virtue of a delegation under this section must, when required to do so, produce evidence of such delegation to exercise the power.
- (4) Any person in breach of subsection (3) commits an offence and is liable upon conviction to a fine of \$5,000 or imprisonment for 2 years or both.

## **14 Meetings and proceedings of the Authority**

- (1) The Authority may meet as and when necessary or expedient for the performance of its functions, with such meetings held at a time and venue determined by the Chairperson.
- (2) The Chairperson shall preside at all meetings of the Authority and in his or her absence, the Minister may appoint a person whether or not a member of the Authority to act as Chairperson.
- (3) At a meeting of the Authority, three members shall form a quorum.
- (4) Any issues raised or to be decided shall be done so by a majority of the votes of the members present and voting, and in the event of equality of votes, the Chairperson, or in his or her absence, the person presiding shall have the casting vote.
- (5) The validity of any proceedings of the Authority shall not be affected by any vacancy amongst its members or by any defect in the appointment of any member.

**15 Authority may invite others to meetings**

- (1) The Authority may invite any person to attend a meeting of the Authority for the purposes of advising it on any matter under discussion.
- (2) A person invited to attend a meeting under subsection (1) shall not vote at any meeting of the Authority.

**16 Disclosure of interest**

- (1) Any member of the Authority who has direct or indirect interest, whether personal or pecuniary in a matter under discussion by the Authority, must disclose to the Authority the fact and nature of his or her interest.
- (2) A disclosure under subsection (1) must be recorded in the minutes of the meeting of the Authority.
- (3) After disclosure under subsection (1) the member in question shall not participate in nor be present during any discussion, deliberation or decision of the Authority regarding that particular matter in which the member has an interest.
- (4) A member who fails to disclose his or her interest as required by subsection (1) commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for 4 years or both.

**17 Consultation**

The Authority may at any time and in way that it sees fit, consult with persons of relevant expertise, interest groups, or the general public before taking a decision or action under this Act.

**18 Annual reports**

- (1) The Authority must within 3 months after the end of each financial year, prepare an annual report detailing its activities during that financial year and present the report to Cabinet before making it available to the public.
- (2) An annual report prepared in accordance with subsection (1) must contain an audited statement of accounts prepared in accordance with generally accepted accounting practices as determined by the laws of Nauru or by international standards.

**PART 3 – SPONSORSHIP APPLICATION AND APPLICATION TO THE ISA**

**19 Invitation for Sponsorship Applications**

The Authority may in any manner it sees fit, invite Sponsorship Applications, or entertain discussions with Sponsorship Applicants or potential Sponsorship Applicants.

**20 Eligibility to perform Seabed Mineral Activities**

To be eligible to perform Seabed Mineral Activities, a Sponsorship Applicant must first:

- (a) obtain a valid Sponsorship Certificate from the Authority; and
  - (b) obtain a valid contract from the ISA,
- pertaining to those Seabed Mineral Activities.

**21 Processing of Sponsorship Applications**

- (1) The Authority:
  - (a) must deal with Sponsorship Applications promptly, and in accordance with this Act; and
  - (b) may request further information from a Sponsorship Applicant, or request the Sponsorship Applicant to amend any part of its Sponsorship Application, at any time before making a recommendation under section 23 of this Act or may return a Sponsorship Application if a Sponsorship Applicant fails to comply with a reasonable request under this subsection.
- (2) In making a recommendation under section 23, the Authority may take into account any or all of the information submitted by the Sponsorship Applicant, and any relevant information in the public domain, or received through consultation, or otherwise held in the Republic's records.

- (3) A previous decision by the ISA to grant a Sponsorship Applicant a contract for activities similar to those that are the subject of a Sponsorship Application may be considered by the Authority as evidence in relation to any of the Qualification Criteria for that Sponsorship Application.

## **22 Content of a sponsorship application**

A Sponsorship Application must be made in writing to the Authority and must:

- (a) provide evidence that the Sponsorship Applicant meets the Qualification Criteria; and
- (b) include:
- (i) the same content that is required by the Rules of the ISA for an application for approval of a plan of work to obtain a contract for the proposed Seabed Mineral Activities;
  - (ii) written undertakings by way of statutory declaration that the Sponsorship Applicant:
    - (A) will fully comply with its obligations under the Rules of the ISA and this Act;
    - (B) warrants that the content of the Sponsorship Application is true and accurate to the best of its belief; and
    - (C) intends to apply for a contract with the ISA to conduct Exploration or Exploitation in the Area under the sponsorship by Nauru;
- (c) copies or summaries of any studies conducted by the Sponsorship Applicant or other data in relation to the geological and commercial potential of the site or sites within which the proposed Seabed Mineral Activities will be conducted;
- (d) copies or summaries of any studies conducted by the Sponsorship Applicant or other data in relation to potential impact of the Seabed Mineral Activities on the Marine Environment;
- (e) an indication of the Sponsorship Applicant's proposed:
- (i) methods for financing the Seabed Mineral Activities;
  - (ii) ownership, lease, bond or other arrangement to use vessels and equipment required for the operation of the Seabed Mineral Activities; and



- (iii) insurance or contingency funding to cover damage that may be caused by the Seabed Mineral Activities or the costs of responding to an Incident;
- (f) a list of employees required to operate the Seabed Mineral Activities, and an indication if any of these will be recruited from Nauru;
- (g) a capacity building programme for the training of citizens of Nauru;
- (h) the application fee required under this Act;
- (i) a statement as to whether the Sponsored Party or any of its Directors has previously been found on reasonable evidence to have:
  - (i) breached a material term or condition of the Rules of the ISA and international law;
  - (ii) been convicted of an offence or incurred a civil penalty pertaining to the conduct of Seabed Mineral Activities or similar sea or land based activities in another jurisdiction; or
  - (iii) been convicted of an offence involving fraud or dishonesty;
- (j) any further matters as may be prescribed.

## 23

### **Qualification criteria**

- (1) The Authority shall review any Sponsorship Application received, and may recommend to Cabinet, the issue of a Sponsorship Certificate if it is satisfied that:
  - (a) the undertakings required by section 22 have been given;
  - (b) the Qualification Criteria are met; and
  - (c) that the proposed Seabed Mineral Activities:
    - (i) will not result in irreparable harm to any community, cultural practice or industry in Nauru; and
    - (ii) would be generally in the public interest, taking into account the potential for capacity-building, local employment and the long-term benefit to Nauru.
- (2) The Qualification Criteria are that:
  - (a) the Sponsorship Applicant:
    - (i) is an existing body corporate, registered in Nauru;

- (ii) has, or will have at the commencement of the proposed Seabed Mineral Activities, sufficient financial and technical resources and capability, to:
    - (A) properly perform the Seabed Mineral Activities in compliance with the Rules of the ISA; and
    - (B) cover damage that may be caused by the Seabed Mineral Activities or the costs of responding to an Incident;
  - (iii) has paid any applicable fees;
- (b) the proposed Seabed Mineral Activities are consistent with the Rules of the ISA;
- (c) the proposed Seabed Mineral Activities are compatible with applicable national and international laws, including those relating to safety at sea and the protection and preservation of the Marine Environment; and
- (d) the proposed Seabed Mineral Activities will not unduly affect:
- (i) the rights of the other legitimate sea users; or
  - (ii) the protection and preservation of the Marine Environment; and
  - (iii) international peace and security.

**24 Sponsorship Certificate Decision**

- (1) A decision on whether to issue a Sponsorship Certificate shall be taken by Cabinet, based upon the recommendation from the Authority, and shall be communicated to the Sponsorship Applicant by the Authority in a timely manner.
- (2) Where a decision is taken under section 24(1) of this Act to deny the Sponsorship Certificate, the Authority will provide the Sponsorship Applicant with a written statement of reasons for the decision, and present the Sponsorship Applicant with a reasonable opportunity to re-submit an amended version of that Sponsorship Application, without requiring another Application fee.
- (3) Where a decision is taken by Cabinet to issue a Sponsorship Certificate, public notice of the decision will be given by the Authority within 30 days of that decision.

**25 Terms of the Sponsorship Certificate**

A Sponsorship Certificate, signed by the head of the Authority shall be issued to a Sponsored Party in a form necessary to satisfy the Rules of the ISA, and will contain:

- (a) the name of the Sponsored Party;
- (b) a statement that the Sponsored Party is:
  - (i) a national of Nauru; or
  - (ii) subject to the effective control of Nauru or its nationals;
- (c) a statement by the State that it sponsors the Sponsored Party;
- (d) the date of deposit by the State of its instrument of ratification of, or accession or succession to, the UNCLOS;
- (e) a declaration that the State assumes responsibility in accordance with Article 139, Article 153 (4) and Annex III, Article 4 (4) of the UNCLOS;
- (f) the date at which the sponsorship commences;
- (g) a statement that the Sponsorship Certificate shall remain in force for the duration of any ISA contract awarded to the Sponsored Party under the State's sponsorship, unless otherwise terminated in accordance with this Act; and
- (h) any other content reasonably required by the ISA or that the Authority considers fit to include.

## **26 Application by Sponsored Party to ISA**

- (1) A Sponsored Party may, on the basis of the Sponsorship Application submit an application to the ISA for a contract for Exploration or Exploitation under Nauru's sponsorship.
- (2) The Authority will cooperate with the Sponsored Party to facilitate the preparation, submission and support of the application to the ISA.
- (3) The costs of presenting that application to the ISA shall be met by the Sponsored Party, including any costs reasonably incurred by Nauru in taking actions either requested by the Sponsored Party or deemed necessary by Nauru under the Rules of the ISA, to support the application before the ISA.

## **27 Sponsorship Agreements**

The Authority, with Cabinet's approval, may enter into written agreements with the Sponsored Party at any time to establish additional terms and conditions as to the sponsorship arrangement, provided:

- (a) the Authority has consulted as provided under section 17 of this Act, before making any recommendation to Cabinet to enter into such an agreement; and
- (b) the terms of such an agreement do not or are not likely to lead to a contravention by Nauru or the Sponsored Party of the UNCLOS, the Rules of the ISA or this Act.

#### **PART 4 – OBLIGATIONS PERTAINING TO THE CONDUCT OF SEABED MINERAL ACTIVITIES**

##### **28 Duties pertaining to Seabed Mineral Activities**

Any Sponsored Party is required, *inter alia*, to:

- (a) adhere to the provisions of the Rules of the ISA and this Act;
- (b) provide sufficient training, supervision and resources to employees, agents or officers so as to ensure compliance with the Rules of the ISA and any other instructions or requests of the ISA;
- (c) facilitate the ISA's regulation and the Authority's monitoring of Seabed Mineral Activities in accordance with the Rules of the ISA and this Act and comply with the reasonable requests, directions or orders of the ISA inspectors, or of Authority observers made pursuant to section 31 of this Act;
- (d) apply the Precautionary Principle, and employ best environmental practice in accordance with prevailing international standards in order to avoid, mitigate or remedy adverse effects of Seabed Mineral Activities on the Marine Environment;
- (e) offer to Nauru opportunities for training in relation to, and participation in, the Seabed Mineral Activities;
- (f) at all material times maintain appropriate insurance policies that provide adequate cover for identified risks and costs of damages that may be caused by the Seabed Mineral Activities, or otherwise satisfy Nauru of its financial and technical capability to respond to potential Incidents;
- (g) report to the ISA and the Authority immediately in the event of an Incident occurring or appearing reasonably likely to occur, and respond efficiently and responsibly to the Incident, including by seeking and following the ISA's, and the Authority's directions where appropriate;
- (h) submit to the ISA and the Authority immediately in writing, notice of any new information arising or data collected that materially affect:
  - (i) the Qualification Criteria; or

- (ii) the programme of work contained in the contract between the Sponsored Party and the ISA; or
  - (iii) the Sponsored Party's ability to adhere to the terms of the Rules of the ISA;
- (i) at all material times to ensure that:
- (i) any vessels, installations and equipment engaged in Seabed Mineral Activities are in good repair and comply with:
    - (A) the laws of the flag state relating to international vessel standards developed to ensure maritime safety and security, good working and living conditions and protection of the marine environment;
    - (B) all relevant standards in international shipping conventions to which Nauru is a contracting State.
  - (ii) working conditions for personnel engaged in Seabed Mineral Activities:
    - (A) meet applicable employment rules and health and safety standards;
    - (B) comply with the laws of the flag state relating to the safety of life at sea;
    - (C) comply with all relevant standards in international shipping conventions to which Nauru is a contracting State.
- (j) not dump mineral materials or waste from any vessel except in accordance with relevant international law or the Rules of the ISA;
- (k) not proceed or continue with the Seabed Mineral Activities without obtaining prior specific written consent from the ISA to proceed, if evidence arises that to proceed is reasonably likely to cause significant adverse impact to:
- (i) the Marine Environment; or
  - (ii) the safety, health or welfare of any person; or
  - (iii) other existing or planned legitimate sea uses including but not limited to Marine Scientific Research, navigation, submarine cables, fisheries or conservation activities; and
- (l) upon submitting data, reports or other information to the ISA in relation to the Seabed Mineral Activities, ensure that the content of these documents are true, accurate and comprehensive, and provide copies of the same to the Authority.

## **29 Liability of Sponsored Party**

- (1) A Sponsored Party shall be responsible for the performance of all Seabed Mineral Activities carried out within the Contract Area, and their compliance with the Rules of the ISA and shall be liable for the actual amount of any compensation, damage or penalties arising out of its failure so to comply, or out of any wrongful acts or omissions in the conduct of the Seabed Mineral Activities.
- (2) By operation of this section, Nauru shall be indemnified against all actions, proceedings, costs, charges, claims and demands which may be made or brought by any third party in relation to a Sponsored Party's Seabed Mineral Activities.

## **PART 5 – ROLE OF NAURU AS A SPONSORING STATE**

### **30 State responsibilities**

Where Nauru is sponsoring a Sponsored Party which holds a contract with the ISA to conduct Seabed Mineral Activities, Nauru via the Authority will:

- (a) seek to ensure that its conduct in relation to the ISA, the Area and Seabed Mineral Activities adheres to the requirements and standards established by general principles of international law;
- (b) take all appropriate means to exercise its effective control over Sponsored Parties or any relevant sub-contractors engaged by the State, seeking to ensure that any Seabed Mineral Activities are carried out in conformity with the UNCLOS, the Rules of the ISA and other requirements and standards established by general principles of international law;
- (c) do all things reasonably necessary to give effect to its sponsorship of a Sponsored Party, including undertaking any communication with and providing any assistance, documentation, certificates and undertakings to the ISA or other relevant party required in respect of the Sponsorship;
- (d) not impose unnecessary, disproportionate or duplicate regulatory burden on Sponsored Parties, nor impose requirements upon a Sponsored Party under this Act or Regulations unless these are consistent with existing requirements imposed by the UNCLOS, the Rules of the ISA and other applicable standards of international law;
- (e) promote the application of the Precautionary Principle and best environmental practice.

### **31 Monitoring powers**

- (1) The Authority shall have the power to make such examinations, inspections and enquiries of Sponsored Parties and the conduct of

Seabed Mineral Activities as are necessary to meet its responsibilities under international law, which may include the:

- (a) sending of an observer to the site of the Seabed Mineral Activities and vessel or premises of the Sponsored Party; and
  - (b) inspection of relevant books, records and other relevant data, from time to time, upon giving reasonable notice to the Sponsored Party;
- (2) An observer engaged in accordance with subsection 1(a) shall take all reasonable steps to avoid interference with the safe and normal operations on board vessels.
- (3) Where an inspection is carried out in accordance with subsection 1(b), the Authority may direct any person to furnish within a reasonable time any information it reasonably believes is in that person's possession which:
- (a) relates to any Sponsorship Certificate or Seabed Mineral Activities; or
  - (b) is otherwise directly relevant to the discharge of the Authority's functions.
- (4) A person or party who fails to comply with a direction issued under this section commits an offence and is liable upon conviction to a fine of \$100,000 or imprisonment for 10 years or both.

## **32 Administrative Action**

- (1) In the event of the Authority determining that a Sponsored Party has materially breached, or in the Authority's reasonable opinion is at serious risk of materially breaching the Rules of the ISA, the Authority may:
- (a) issue written warnings in relation to possible action the Authority may take in the event of future material breaches;
  - (b) enter into a written agreement for the Sponsored Party to undertake a programme of remedial action and to mitigate the risk of re-occurrence;
  - (c) issue a written notice requiring the Sponsored Party to take specified action, or not take specified action, aimed to stop, remedy or mitigate the risk of occurrence or re-occurrence of material breach;
  - (d) in the case of actual material breach:
    - (i) impose upon the Sponsored Party monetary penalties proportionate to the seriousness of the violation and in

any case not exceeding \$100,000, which amount excludes any compensation payable for damage or harm;

- (ii) commence a process under section 39 of this Act to revoke the Sponsorship Certificate.

(2) Action taken under subsection (1) must be commensurate with the gravity, frequency and other circumstances of the material or reasonably anticipated breach, including the Sponsored Party's previous conduct under Nauru's Sponsorship.

## **PART 6 – REGISTRATION, TERMINATION, RENEWAL OF SPONSORSHIP**

### **33 Records**

(1) The Authority must retain up-to-date and accurate records of Sponsorship Applications received, Sponsorship Certificates issues, ISA contracts held, and all ensuing communication, reports or other information created or received.

(2) The Authority must ensure that all such records are held with appropriate confidentiality, and will not disclose commercially sensitive information unless agreed otherwise with the Sponsored Party.

### **34 Security of Tenure**

A Sponsorship Certificate shall remain in force unless and until it is terminated in accordance with section 35 of this Act.

### **35 Termination**

A Sponsorship Certificate is terminated if, pursuant to this Act:

- (a) the Sponsored Party's contract with the ISA expires, is surrendered or is terminated; or
- (b) if is surrendered by the Sponsored Party in accordance with section 37 of this Act; or
- (c) it is revoked by the Authority in accordance with section 39 of this Act;

and upon termination all rights granted by Nauru shall cease.

### **36 Ongoing liability after termination**

Despite the termination of a Sponsorship Certificate, a Sponsored Party shall remain:



- (a) subject to any ongoing obligations with respect to Seabed Mineral Activities that occurred prior to termination, including requirements to submit reports and to make payments to the Authority or the ISA; and
- (b) responsible in accordance with this Act for any damage from its wrongful acts or otherwise arising from Seabed Mineral Activities carried out prior to termination.

**37 Surrender of sponsorship**

A Sponsored Party may at any time surrender a Sponsorship Certificate without penalty by giving to the Authority not less than three months' previous notice in writing to that effect.

**38 Renewal of sponsorship**

- (1) With the approval of Cabinet, a Sponsorship Certificate may be renewed by the Authority for successive periods of up to five years each, provided an application for renewal is received from the Sponsored Party by the Authority at least nine months before the expiry of any initial term.
- (2) The Authority will, within three months of the receipt of the application for renewal, inform the Sponsored Party of whether the renewal has been granted or refused and until that decision is communicated, the Sponsorship Certificate shall be deemed to continue in force.

**39 Variation, suspension and revocation of a Sponsorship Certificate**

- (1) The Authority may vary, suspend or revoke any Sponsorship Certificate:
  - (a) where any of the Sponsorship Qualification criteria ceases to be met by the Sponsored Party in a material particular;
  - (b) where a security deposit required under section 45 is not deposited in accordance with this Act;
  - (c) where the variation or revocation is in the reasonable opinion of the Authority necessary to:
    - (i) prevent serious risk to:
      - (A) the safety, health or welfare of any person; or
      - (B) the Marine Environment; or
    - (ii) avoid conflict with any obligation of Nauru arising out of any international agreement or instrument in force for Nauru;

- (d) in any case, with the consent of the Sponsored Party;
  - (e) upon the bankruptcy, insolvency or receivership of the Sponsored Party, or upon the Sponsored Party ceasing to exist as a legal entity;
  - (f) where no material efforts have been made by the Sponsored Party to undertake the sponsored Seabed Mineral Activities for a period exceeding five years from the date of signing the contract with the ISA;
  - (g) where there has been a serious, persistent or wilful breach by the Sponsored Party of the Rules of the ISA, the requirements of this Act or Regulations or Orders made under this Act, or a final binding decision of a dispute settlement body applicable to the Sponsored Party; and such breach cannot be remedied by the Sponsored Party, or has not been remedied upon the giving of reasonable notice to the Sponsored Party by the Authority;
  - (h) where, following at least two written notices given by the Authority to the Sponsored Party in accordance with this Act, any payment or deposit required owing under this Act is in arrears or unpaid for six months following the day on which it ought to have been paid;
  - (i) where the Sponsored Party knowingly or recklessly provides the ISA or the Authority with information that is false or misleading in a material particular, or fails to retain or wilfully alters, suppresses, conceals or destroys any document which is required to be produced to the ISA or the Authority.
- (2) Before making a decision under this section of the Act, the Authority shall:
- (a) give to the Sponsored Party at least 30 days' written notice of the Authority's intention to make the decision, setting out details of the proposed decision and the reasons for it, and inviting a person to whom the notice, or a copy of the notice has been given to make a written submission to the Authority about the proposal within a specified timeframe; if there are any objections;
  - (b) give a copy of the notice to any other person as the Authority thinks fit;
  - (c) take into account any submissions made in accordance with the notice; and
  - (d) where the decision is to revoke the Sponsorship Certificate, give the Sponsored Party no fewer than six months' notice before that revocation takes place.

## **PART 7 – FISCAL ARRANGEMENTS**

### **40 Payments by Sponsored Parties**

- (1) A Sponsorship Applicant must pay to the Authority a non-refundable Sponsorship Application fee of US\$15,000 upon the submission of a Sponsorship Application.
- (2) Subject to subsection (3), the holder of a Sponsorship Certificate must pay to the Authority an annual administration fee of US\$20,000:
  - (a) within six months from the date of issue of the Sponsorship Certificate; and
  - (b) every year after that, on the anniversary each of the date of the issue of the Sponsorship Certificate.
- (3) During the fifth year of the Sponsorship Certificate term, the Authority may review the amount of the administration fee required each year for the remainder of the term of the Sponsorship Certificate, and may reasonably increase the amount where this is required to cover the actual costs to Nauru of administering and supervising the sponsorship.
- (4) A Sponsored Party holding an ISA contract for Exploitation under Nauru's sponsorship must pay to the Authority such sums by way of a Seabed Mineral recovery payment as and when it is agreed and specified in a written agreement made under section 27, prior to the commencement of Exploitation by the Sponsored Party.
- (5) The recovery payment amount in subsection (4) must:
  - (a) take into account the set-up, Exploration and Exploitation costs incurred by the Sponsored Party; and
  - (b) 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 through the Seabed Mineral Activities.

### **41 Seabed Minerals Fund**

- (1) There shall be established under the control and management of the Treasury a fund to be called the Seabed Minerals Fund into which there is to be deposited any sums paid to the Authority under section 40.
- (2) Funds deposited pursuant to subsection (1) excludes any funds allocated by the Treasury to be used directly for the purposes of covering the costs of establishing the Authority and performing its functions under this Act.

- (3) The Seabed Minerals Fund is established with the objective to ensure the wise management of the Seabed Minerals resources for the benefit of both current and future generations of Nauru.

**42 Rules for the operation and management of the Seabed Minerals Fund**

The rules for the operation and management of the Seabed Minerals Fund will be laid down by separate legislation or regulations.

**43 Financial payments to the ISA**

A Sponsored Party will be responsible to make prompt and full payment of any sums due to the ISA, under the Rules of the ISA.

**44 Recovery of payments owed by Sponsored Parties**

A sum of money payable pursuant to section 40 is a debt to the State, and may be recovered in the Supreme Court and:

- (a) in any such proceedings a certificate of the Authority certifying that a specified sum of money is payable, shall be received as evidence of that fact;
- (b) any debt of the Sponsored Party may at the court's discretion be recovered from any security deposited by the same Sponsored Party under section 45; and
- (c) interest on the amount outstanding may additionally be charged at a prescribed or otherwise reasonable rate.

**45 Security**

- (1) The Authority may after an Exploitation contract has been granted by the ISA to the Sponsored Party, and prior to Exploitation commencing, require a Sponsored Party to deposit security as a guarantee of performance of its obligations under the Rules of the ISA and this Act.
- (2) The form and value of any such security required, and the terms upon which it will be held, will be specified in a written agreement made under section 27, and will take into account the type and quantum of any security that the Sponsored Party is also required to deposit with the ISA.
- (3) Security deposited in accordance with this section may be used by the Authority to take steps towards fulfilling any obligations that the Sponsored Party fails to fulfil under this Act, or to rectify any damage or loss caused as a result of such failure.

## PART 8 – MISCELLANEOUS

### 46 Appellate Jurisdiction

The Supreme Court has jurisdiction under this Act to conduct:

- (a) judicial review of administrative decisions, determinations, actions or inquiries taken under this Act; or
- (b) proceedings to establish liability and to provide recourse for prompt and adequate compensation in the event of an unlawful damage caused by Seabed Mineral Activities, in accordance with Article 235(2) of the UNCLOS.

### 47 Inquiries into Incidents

- (1) Where an Incident occurs in respect to Seabed Mineral Activities under the Sponsorship of Nauru, the Sponsored Party shall inform the ISA and copy all information provided to the ISA to the Authority.
- (2) The Authority may hold or may commission inquiries into Incidents.

### 48 Other sea users

Nothing in this Act 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.

### 49 Other States

Nothing in this Act shall in any way affect the rights of coastal States in accordance with Article 142 and other relevant provisions of the UNCLOS.

### 50 Interference with Seabed Mineral Activities or the Authority

- (1) Unless authorised under this Act, Rules or Regulations, any third party commits an offence and is liable upon conviction to a fine of \$100,000 or imprisonment for 10 years or both, if that third party interferes with:
  - (a) Seabed Mineral Activities; or
  - (b) the Authority or its representative in the performance of duties under this Act, or incites another person to so behave.
- (2) For the purposes of subsection (1), *'interfere'* means wilful sabotage of Seabed Mineral Activities, or violence against or similar physical interferences with any representative of the Authority or person conducting Seabed Mineral Activities.

### 51 Public service employees prohibited from Seabed Mineral rights

- (1) Unless any right or interest of an employee of the Republic has been approved and declared by Cabinet, no public service employee shall:
  - (a) directly or indirectly acquire or retain any personal share-holding in a body corporate carrying on Seabed Mineral Activities under Nauru's Sponsorship; or
  - (b) act, directly or indirectly, to personally acquire any right or interest in any Sponsored Party's contract for Seabed Mineral Activities.
- (2) Any document or transaction purporting to confer any right or interest on any such public officer who has acted in breach of subsection (1) shall be null and void.
- (3) Any public service employee in breach of subsection (1) shall be liable upon conviction to a fine of not less than \$5,000 or to imprisonment for 5 years or both.

**52 Offence by body corporate**

Where an offence under this Act has been committed by a body corporate with the consent or connivance, or is attributable to the neglect, of any director or officer of the body corporate, that officer as well as the body corporate is guilty of that offence.

**53 Notice**

Any application, request, notice, warning, report, or direction made or given under this Act shall be made in writing by the head of the Authority or the designated representative of the Sponsored Party, as the case may be, and shall be deemed served the day after delivery, if delivered by hand, facsimile or email to the Authority or to the designated representative.

**54 Disputes**

- (1) Any dispute arising between Nauru and another State in connection with Seabed Mineral Activities shall be resolved pursuant to the provisions of the UNCLOS.
- (2) Any dispute between Nauru and the Sponsored Party arising in connection with the administration of this Act shall be dealt with by:
  - (a) the parties attempting to reach settlement by mutual agreement or mediation, and in the event this is not successful then;
  - (b) by referral to arbitration in accordance with the *Courts Act 1972*;

- (c) an application submitted to the International Tribunal of the Law of the Sea for any case expressly provided for in Part XI of the UNCLOS.

**55 Transitional Provisions**

Where Nauru has provided a Certificate of Sponsorship to an ISA contractor prior to the commencement of this Act, that certificate shall be deemed to have been issued in accordance with this Act and shall remain valid unless and until it is terminated pursuant to this Act.

**56 Regulations**

- (1) The Minister may, with the consent of Cabinet, make Regulations under this Act prescribing anything required or authorised to be prescribed under this Act or generally for carrying this Act into effect.
- (2) Any Regulations made must be consistent with the UNCLOS, the Rules of the ISA and other applicable standards of international law.