

## **Financial Model**

Thank you, Madame. President,

On behalf of the delegation of Japan, I congratulate you for being elected as the President of the Council. We are delighted to be able to work with you and other delegates for various tasks before us, especially for developing the monumental Regulations on the Exploitation of Mineral Resources in the Area.

We welcome that discussions have started at the open-ended informal working group on the financial terms/ and we congratulate the first meeting was successful with active engagements of stakeholders ~~including contractors~~. Taking this opportunity, we would like to express our appreciation to the MIT team for the valuable analysis of the financial model.

We took note that the long-term price of Nickel forecasted in the MIT model is almost twice as the current price of the metal. Depending on the actual metal price, Internal Rate of Return for Contractors will vary.

As the Chinese delegation stated Paragraph 1(a), Section 8 of Annex to the 1994 Agreement provides the principle that the system of payments to the Authority shall be fair both to the contractor and to the Authority. In light of this principle, our delegation is of the view that a proper balance should be struck between the principle of Common Heritage of Mankind and Sound Commercial principles.

Regarding the issue of royalty, in respect of Sound Commercial principles provided in the paragraph 1(a), Section 6 of Annex to the 1994 Agreement, it is important that the Financial regime should reflect the total costs of contractors such as their investments for explorations which is essential for a long-term, commercially viable and safe deep-sea exploitations. Considering that commercial mining of deep seabed is unexplored area, the risk the pioneer investors of exploitation would face should be taken into consideration.

In setting up the Financial regime, the all relevant elements such as the financial incentives provided in Article 13 of Annex III to the Convention, various fees and payments listed in the Appendix II to the Draft Regulations, insurances that Contractors must purchase, should be considered. As a method of the financial incentives, reduction or exemption of payment of royalty and annual fees for the first period of Commercial Production (as defined in Appendix IV) would be effective.

In this respect, our delegation would like to ask the Secretariat once again to produce a list of all payments and fees including insurance that a contractor will be obliged to pay together with information on the purposes of each payment. The list would give us an overview of fees and other payments and such a list will be a useful reference when we discuss and consider about the royalty in light of total costs a contractor would have to bear.

In order to keep the consistency with the Convention and 1994 Agreement, we support the proposal from the delegation of Korea to reflect the provision of para.1 (b) Section 8 of Annex to the 1994 Agreement, which provides the rates of payments shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals.

#### Standards and Guidelines and key concepts

Our delegation would like to join other delegations in expressing appreciation to the Secretariat for producing a briefing paper on Standards and Guidelines.

In Japan, “guidelines” are considered as a typical example of non-binding instruments. In the DR92, Standards require approval of the Council but according to DR93, Guidelines may be issued either by the Secretary-General or the Commission and do not require the approval of the Council. So, making and revising Guidelines are relatively easy and flexible in terms of procedures.

Japan is of the view that guidelines is suitable for documents that require periodic review and frequent revisions. On the other hand, documents that need to be legally binding, should be in Annexes or Appendices that are integral part of the text of the Regulations. For example, the assessment framework for Mining Discharges, which would establish permissible methods of mining discharge, is very significant standards for the aspects of marine environment as well as for mining operation, therefore, in our opinion, it should be legally binding provision in Annex or Appendix instead of “guidelines.” According to the Secretariat’s briefing paper (ISBA/25/C/3) the legal status of guidelines seems to be determined largely by their content, however, it is not appropriate to make a document without being approved by the Council can be legally-binding. Also, we think we should avoid creating a complicated situation in which some guidelines are legally binding and others are not. It can be confusing.

Those guidelines listed in the Table 1 of the document ISBA/25/C/3 are all significant in our opinion. They are so essential that without them the Exploitation Regulations cannot be operationalized. Without knowing those guidelines’ contents, it would be difficult to tell whether the draft regulations are good enough to be approved. We consider those guidelines

need to be completed by the time the Regulations will be adopted.

Another thing I should mention is revisions of guidelines. Guidelines are important reference for contractors for making their plans. Contractors usually invest for their facilities, equipment and environmental measures, in early stage, based on their plans. While it's totally understandable that technical guidelines need to be revised based on the best available scientific knowledge, frequent revisions of guidelines may cause difficulties for contractors to adjust their plan. For this reason, considerations should be needed for contractors, for example, providing a grace period for, or financial incentives for complying with those revised guidelines could be considered.

Regarding development of guidelines, our delegation believes in order to develop practical and effective guidelines, active participation by relevant stakeholders including contractors is needed. In this respect, we support of the Secretariat's idea of "technical working group" mentioned in the ISBA/25/C/3. The group to be established under the Commission will consider inputs from relevant stakeholders including contractors. Japan supports this idea and participates the group when it is established.

Paragraph 7 of DR 19 provides "in relation to exploration activities in the Contract Area the applicable Exploration Regulation shall continue to apply." It is understandable that the applicable Exploration Regulations should govern such exploration activities especially in regard with protection of environment and safety aspect. It is doubtful, however if the Exploration Regulations applies a priori to the exploration activities in the Contract Area even including the provisions of payment of fees and reporting requirements. It should be made clear in standards and guidelines about which provisions of the Exploration Regulations apply to exploration activities in the Contract Area,

I have more comments but stop here. I will send the rest of my comments to the Secretariat by e-mail.

Regarding the Environmental Performance Guarantee, the Secretariat's briefing paper indicates that guidelines are to be developed. If the purpose of the Environmental Performance Guarantee is to secure necessary fund to cover costs for closure of exploitation activities, it may not be indispensable to lodge the whole amount of the Guarantee prior to commencement of Commercial Production. The method of instalment as provided DR27 (3) is a good alternative option to reduce burden on contractors prior to commencement of Commercial Production.

Guidelines are to be prepared for "insurance" according to the Secretariat's briefing paper. DR28 (3) provides "the obligation under an exploitation contract to maintain appropriate

insurance policies is a fundamental term of the contract.” In this context, our delegation considers that exact terms and conditions required in the insurance policy should be made clear in those guidelines that needs to be completed before the regulations become operational.

Regarding the insurance, Japan would like to know the reasons behind the provisions of DR38 (2) which provides that: 1) “contractors shall include the Authority as an additional assured”; and 2) the underwriters have to waive any rights of recourse, including subrogation rights against the Authority in relation to Exploitation in Paragraph 2. Article 22, Annex III to the Convention reads “the Authority shall have responsibility or liability for any damage arising out of wrongful acts in the exercise of its powers and functions.” Our delegation would like to ask clarification whether Paragraph 2 of DR38 which requires contractors to include the Authority as an additional assured in their insurance, is consistent with this provision.