International Seabed Authority ISBA/15/LTC/WP.1

# Legal and Technical Commission

Distr.: Limited
19 January 2009

Original: English

**Fifteenth session**
Kingston, Jamaica
25 May-5 June 2009

## Recommendations for the guidance of contractors for the reporting of actual and direct exploration expenditures as required by annex 4, section 10, of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area

### Prepared by the Secretariat

## I. Introduction

1. These recommendations for the guidance of contractors are issued by the Legal and Technical Commission under regulation 38 of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area ("the Regulations"). Their purpose is to provide guidance to contractors in relation to the following matters:

(a) The books, accounts and financial records to be maintained in accordance with section 9 of annex 4 to the Regulations;

(b) The identification of internationally accepted accounting principles;

(c) The presentation of financial information in the annual report to be submitted pursuant to section 10 of annex 4 to the Regulations;

(d) The definition of the actual and direct costs of exploration as referred to in section 10.2(c) of annex 4 to the Regulations;

(e) The form of certification of actual and direct exploration expenditures.

2. Except as otherwise stated, words and phrases defined in the Regulations have the same meaning in these recommendations for guidance.

3. The purpose of requiring detailed financial reports to be submitted is twofold. First, it is a due diligence requirement that is commonly found in exploration and mining contracts and is included as a means for objective quantification of the contractors' compliance with its plan of work. In this regard, as part of the process of application for a plan of work for exploration, contractors are required to provide

a five-year programme of activities and a schedule of anticipated annual expenditures in respect of such programme (regulation 18). Under the standard clauses (section 4.2), contractors are required to spend in each contract year "not less than the amount specified in [the programme of activities], or any agreed review thereof, in actual and direct exploration expenditures". The annual financial report is thus the only means by which the Authority is able to objectively verify the contractors' compliance with these provisions.

4. The second reason for requiring financial reports is potentially of direct benefit to the contractor. It is a general practice in the mining industry to allow some element of the costs of developing a mine site to be set off against the eventual income from production. As far as seabed mining is concerned, detailed provisions relating to the definition of "development costs" and their recovery in certain circumstances were included in article 13 of annex III to the Convention. By reason of the 1994 Agreement, these provisions shall no longer apply. Nevertheless, the possibility that the Authority may in due course make provision for the recovery of some element of development costs is foreseen in annex 4, section 10.2(c), of the Regulations, which provides that "such expenditures may be claimed by the contractor as a part of the contractor's development costs incurred prior to the commencement of commercial production". In these circumstances, it is particularly important that there be some means of verifying objectively both the amount of such expenditures, their relationship to the programme of activities and whether they are "actual and direct exploration expenditures".

# II. Books, accounts and financial records

5. Section 9 of annex 4 to the Regulations requires each contractor to keep a "complete and proper set of books, accounts and financial records, consistent with internationally accepted accounting principles". For the purposes of the Regulations, the Commission recommends that contractors adopt and apply the International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Board, in particular IFRS 6, relating to the financial reporting of expenditures associated with exploration for and evaluation of mineral resources. Furthermore, in order to ensure comparability with the contractor's financial statements of previous years as well as with the financial statements of other contractors, all financial statements, including the financial statement to be included in the annual report required under section 10 of annex 4 to the Regulations, should be provided in a format consistent with International Accounting Standard (IAS) 1.

# III. Presentation of financial information

6. Section 9 of annex 4 to the Regulations also requires that "such books and financial records shall include information which will fully disclose the actual and direct expenditures for exploration and such other information as will facilitate an effective audit of such expenditures". Accordingly, the information to be disclosed by contractors should make it possible to identify and explain the reported amounts in the financial statements arising from the exploration and evaluation of mineral resources. To this end, it is recommended that contractors indicate their accounting policies for exploration and evaluation expenditures, including the recognition of

exploration and evaluation assets. Contractors should also disclose the amounts of assets, liabilities, income and expense and operating and investing cash flows arising from the exploration for and evaluation of mineral resources.

7. Financial statements should cover the same period as the reporting period and should normally correspond to a calendar year. Where this is not possible, for example because the country in which the contractor is based has a different financial year, the contractor should indicate the accounting year and, as far as possible, should provide a prorated summary of expenditure matching the reporting year.

8. The financial statement should be consistent with the proposed programme of activities, including the proposed schedule of annual expenditure, contained in schedule 2 of the contract over the equivalent period of time. Any deviation from the proposed programme of activities or schedule of annual expenditure should be clearly reported and explained. This should also be in accordance with a formal adjustment to the proposed programme, which would have been agreed on by the parties.

9. When an exploration activity continues beyond an accounting year, the reported costs should relate only to activities that were carried out during the relevant accounting year. Such expenditure should be clearly distinguished from the costs that are associated with past, previous or future exploration activities.

10. Where expenditure is zero, this should also be stated.

## IV. Actual and direct exploration expenditure

11. In accordance with the Regulations, reported expenditure should relate only to the "actual and direct costs of exploration". Not all expenditure incurred during a reporting period may be considered an actual and direct cost of exploration. In general, actual and direct exploration costs are considered to be those that were indispensable for carrying out exploration activities for polymetallic nodules within the financial period in question consistent with the programme of activities as set out in the contract for exploration. Such costs should be properly itemized in the breakdown of expenditures.

12. Pursuant to regulation 1 (3) (b) of the Regulations, "exploration" means the search for deposits of polymetallic nodules in the Area, their analysis, the testing of collecting systems and equipment, processing facilities and transportation systems, and the carrying out of studies of the environmental, technical, economic, commercial and other appropriate factors that must be taken into account in exploitation. Consequently, it may be considered that the costs directly associated with exploration must be those that fall under the list of activities defining the term "exploration". IFRS 6 also provides a non-exhaustive list of examples of expenditures that might be presented in the initial measurement of exploration and evaluation assets. These include topographical, geological, geochemical and geophysical studies, exploratory drilling, trenching, sampling and activities regarding the technical feasibility and commercial viability of extracting a mineral resource.

13. Reported expenditure also needs to relate to actual costs. This means that the costs have actually been incurred and are not notional, estimated or projected costs.

Actual costs are also associated in time with those that occurred during the reporting year. Therefore, they exclude those that relate to past or future exploration work. Actual costs may be different from projected costs, but grounds for any variation should be provided in the report. Unless there are unpredictable circumstances, the variation, if any (e.g., due to fluctuation of currencies), is not expected to be significant.

14. Costs must be incurred directly in connection with the exploration work that has been undertaken in accordance with the programme of work in the contract. This excludes ancillary or indirect costs such as administrative costs (e.g., preparation of annual reports, correspondence with the Secretary-General) or costs related to the attendance of meetings, as they are not directly associated with exploration activities. It also excludes costs incurred prior to the signature of the contract for exploration.

## V. Certification of financial statements

15. It is a requirement of the standard clauses for exploration contracts that the financial statements showing the actual and direct exploration expenditures of the contractor in carrying out the programme of activities during the accounting year must be certified by a duly qualified firm of public accountants, or, where the contractor is a State or a state enterprise, by the sponsoring State.

16. In order to avoid confusion in the application of these requirements, where the contractor is a State or state enterprise, it is recommended that contractors indicate in the annual report which entity of the sponsoring State is entitled to certify the financial statements according to the contractor's domestic procedures regarding the certification and audit of public accounts.

17. The date of receipt of the certification should be the same as for other elements of the annual reports; that is, no later than 31 March of each year. Where this is not possible, for example where the certifying authority applies a different financial reporting period, the contractor should indicate the tentative date of submission in the annual report. Once the certificate is available, the contractor should transmit it to the Secretary-General without delay.