

Chair's Briefing note for the sixth meeting of the Open-ended Working Group in Respect of the Development and Negotiation of the Financial Terms of a Contract

Kingston, 31 October 2022 – 11 November 2022

I. Introduction

1. This briefing note is prepared to assist participants by outlining the main issues for consideration and the scope of work during the meeting on 7-8 November 2022 of the Open-ended Working Group of the Council (OEWG) with a view to further advance the work on the draft regulations on exploitation of mineral resources in the Area in relation to the financial terms of a contract and make appropriate recommendations to the Council in its ongoing negotiations ([ISBA/25/C/WP.1](#)), this in accordance with the mandate set out in the Statement by the President of the Council on the work of the Council during the second part of the twenty-fourth session and annex II ([ISBA/24/C/8/Add.1](#), para 12).

2. On 13 June 2022, I provided my suggested revisions to the [draft regulations](#) (Chair's draft text), which were aimed at facilitating text-based negotiations and included textual proposals to the draft regulations. At the meeting of the OEWG in July 2022, participants discussed the draft text and did conduct a reading of Enclosure I (Part VII Financial terms of an exploitation contract and Part III, regulations 27, 38 and 39). During the meeting in November 2022, the reading of the Chair's draft text of 13 June 2022 will resume from Enclosure II (Appendix IV, determination of a royalty liability) and continue with the remaining text. All, with the aim of being able to provide a Chair's revised text for the first part of the twenty-eight session that will include the outcome of the discussions during part II and III of the twenty-seventh session.

3. During the meeting in March 2022, it was agreed to try to establish further collaboration between MIT and the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF). Several intersessional meetings have been held between MIT, IGF and ISA and preliminary views and experiences have been exchanged with a view to identifying how IGF can best contribute its experience to support the ongoing discussions. Due to the time constraints, it has not been possible for IGF to prepare a full presentation in time for this meeting.

II. Structure of the meeting

4. For the meeting in November 2022, I suggest that the focus be on the following aspects:

- a. Resumed reading of the Chair's text for a payment system, including relevant parts of Appendix IV and the draft Standard and Guidelines.
- b. Particular issues related to the valuation of manganese in the nodules (as previously agreed).
- c. Considerations on deduction of domestic and sponsoring state tax from (higher) royalty rates¹.
- d. Considerations on financial implications of direct and indirect transfer of rights².

III. Structure of the text

5. I will remind participants that the structure of the chair's text is composed of four elements:

- a. Enclosure I: Part VII Financial terms of an exploitation contract and Part III (Regulations 27, 38 and 39), Rights and obligations of Contractors;
- b. Enclosure II: Appendix IV, Determination of a royalty liability;
- c. Enclosure III: Draft Standard; and
- d. Enclosure IV: Draft Guidelines in accordance with Regulations 65 and 95 in respect of the administration and management of royalties prescribed in Part VII.

6. The proposed amendments to the current Appendix IV are suggested with the aim to fit with the approach proposed by the MIT modelling and high-level requirements to implement a royalty calculation mechanism for a two-stage variable ad valorem approach. I take note of the different views presented during the March meeting, where some presented positions on which option(s) were preferable, while others maintained that all options should remain on the table. In continuance of that, I would therefore like to draw the attention to the fact that no elements of Appendix IV are affected by the choice of option and rate.

7. The suggested draft Standard is proposed to detail the royalty mechanism in the amended Appendix IV, to fit with the approach reflected in the MIT modelling and detailed requirements to implement a royalty calculation mechanism for a two-stage variable ad valorem approach. Only section 5 of the draft Standard is affected by the choice of option and rate.

¹ In relation to items b. and c., MIT will make an introductory presentation on both these items. After each presentation, I would like to invite for discussions of the topics, all in order, to progress the negotiations of how these elements should be addressed in the draft regulations.

² A recorded presentation by IGF on its experiences with taxation on transfer of rights will be presented as part of the introduction of the item.

8. The draft Guidelines attempt to implement regulation 65(1) which requires the issuance of Guidelines in respect of the administration and management of royalties. The draft Guidelines set out a number of key items to be considered and detailed to fit with the approach proposed by the MIT modelling. Only the “Worked example of royalty calculation” in the draft Guidelines are affected by the choice of option and rate.

Oslo, Norway, 20 October 2022