February 2023

ISA Contractor Submission Responding to the African Group Submissions and Suggesting Amended Text For the Payment Regime Provided for in the Draft Regulations on the Exploitation of the Mineral Resources in the Area

INTRODUCTION

1. A group of ISA Contractors has the pleasure of making this submission responding to the African Group (AG) submissions and suggesting amended regulatory text for the payment regime contained in the Draft Regulations on the Exploitation of Mineral Resources in the Area ("Draft Regulations") and related Standards.
2. Positions expressed and amendments suggested in this submission are informed by:
   i. Informal intersessional discussions convened at the AG's initiative on 19-20 Jan 2023 in New York and attended by four members of the AG, four ISA contractors (GSR, NORI, TOML, UKSR), representatives of Canada, UK, Nauru, and representatives from IGF and MIT
   ii. Four AG submissions on the payment regime:
      - July 2019 submission titled African Group submission of two Payment Regimes for consideration by the Council of the International Seabed Authority
      - June 2022 submission titled African Group Submission on the Payment Regime for Deep-sea Mining in the Area
      - 22 August 2022 submission titled African Group Submission Suggesting Amended Text for the Payment Regime Provided for in the Draft Regulations on the Exploitation of Mineral Resources in the Area
      - Updated submission titled African Group Speaking Notes on the Payment Regime
   iii. Two sources of the draft regulatory text: (1) The Chair of the Open-Ended Working Group on the Financial Terms of Contracts Briefing Note, July 2022) (BNFTC) and (2) Draft Regulations on the Exploitation of Mineral Resources in the Area, Collation of Specific Drafting Suggestions by Members of the Council, December 2019 (DRSDS). When a draft regulation is included in both the BNFTC and DRSDS, then the draft regulation is quoted from the BNFTC. This approach is followed as the draft regulations included in the BNFTC account for edits suggested in the informal working groups, while the DRSDS predates those working groups.
3. We believe that positions expressed and amendments suggested in this submission offer a pragmatic accommodation of valid concerns raised in the above-mentioned AG submissions and, if adopted, would result in a payment regime that strikes the right balance in the implementation of the guiding objectives set forth in UNCLOS (Annex III, Article 13(1)) and the principles established by the 1994 Implementation Agreement (annex, Section 8(1)).
4. In summary, we assume the following positions in this submission:
   i. We support Effective Tax Rate (ETR) as an appropriate metric to assess fairness and competitive (dis)advantage of the ISA payment regime, as long as an ETR includes net taxes and levies paid by ISA Contractors to their Sponsoring States.
   ii. We support the AG's intent in proposing a mechanism to enable the ISA to prevent ISA Contractors from avoiding or minimizing their tax burden on Area operations through Sponsorship Agreements and other arrangements with Sponsoring States.

iii. We propose a different mechanism for the ISA to ensure that an ETR for ISA contractors is within the range of those prevailing in respect of land-based mining of the same or similar minerals (“ETR normalization levy”) which would account for revenue, tax and profitability based on actual audited accounts rather than current projections made using low accuracy estimates.

iv. We support a low ad valorem royalty for the initial 5-year term of each exploitation contract to ensure a revenue flow to the ISA while allowing the ISA Contractor to recoup their investment in developing a new industry, followed by higher royalty payments to the ISA thereafter.

v. We agree that the royalty mechanism, including the system and rates of payments should be reviewed against the provisions of UNCLOS and the 1994 Agreement five years from the commencement of Commercial Production and propose continued regular rate reviews every five years thereafter.

vi. We support the adoption of the Open-Ended Working Group’s “Option 4” payment regime (2-stage progressive ad valorem).

vii. We continue to view the value of the nodules removed from the area as the most appropriate basis for the ISA royalty calculation and believe this approach can be operationalized from day one of Commercial Production.

viii. As an alternative, in view of the current uncertainties around the valuation of nodules and difficulties establishing a nodule ore price before the start of Commercial Production, we support a royalty based on metal prices for nickel, copper and cobalt and medium-grade manganese ore price for manganese contained in nodules for the first five years of Commercial Production, followed by moving to a royalty based on nodule ore price thereafter.

ix. We support in principle the concept of a financial imposition on profits or capital gains realised through the direct or indirect transfer of exploitation rights granted by the ISA.

x. We propose amendments to the implementation details to address concerns around proportionality, potential impacts on project finance, group reorganizations and risk of double-taxation.

xi. We encourage the ISA to require high standards of financial disclosure of all ISA contractors, including through independent audit, to enable efficient and flexible administration of the financial regime.

5. This submission is structured into three parts:
    - Operationalizing objectives and principles contained in UNCLOS and the 1994 Implementation Agreement
    - Defining provisional financial payment regime and rates
    - Draft Regulations and Standards: Suggested amended text on the payment regime.

OPERATIONALIZING OBJECTIVES AND PRINCIPLES CONTAINED IN UNCLOS AND THE 1994 IMPLEMENTATION AGREEMENT

6. **Effective tax rate (ETR) as a metric for assessing fairness and competitive (dis)advantage**: In his March 2022 note, the OEWG Chair summarized the Joint Summary given by the ISA consultants (CRU, RMG) as follows: "royalty rates and corporate income tax (CIT) rates are completely unrelated in theory and also in practice. No government sets a royalty rate depending on the prevailing CIT rate or the effective tax rate or the other way around. CIT rates and royalty rates are set in separate processes. Comparison of payment systems for seabed mining with land-based mining should thus not include CIT, and CIT should not be a factor of importance when considering a system of payments for the Authority." Throughout its submissions, the AG however has maintained that an ETR (that includes CIT) should be used as a metric for ensuring that ISA is fairly compensated and that ISA contractors are not artificially advantaged compared to land-based miners. The AG also cites two publicly available Sponsorship Agreements with zero CIT due to the Sponsoring State as the basis to assume that most ISA contractors will not pay CIT to their Sponsoring State, thereby putting them at an unfair advantage. We partially support the AG position:

   i. Any ISA contractor granted the privilege to explore and develop a Common Heritage of Humankind resource should pay their fair share of royalties and taxes to the ISA and their Sponsoring State(s).

   ii. ETR is a reasonable metric for the ISA to adopt to ensure that its payment rates—when considered together with payments to Sponsoring States related to contractor activities in the Area—are "fair both to the contractor and Authority" (Article 8(1)(b), annex, 1994 Agreement) and are "within the range of those prevailing in respect of land-based mining of the same or similar minerals" (Article 8(1)(c), annex, 1994 Agreement). Indeed, average ETR is a metric routinely used by organizations like IMF when comparing fiscal regimes across land-based mining countries (see IMF formula for average ETR below from IMF's Technical Note and Manual, 2016).

      Average Effective Tax Rate (AETR)
      The AETR is the ratio of the NPV of government revenue (composed of royalty, income tax, resource rent tax, withholding taxes, and so on, as specified by the fiscal regime) to the NPV of the pre-tax net cash flows of a successful project, both calculated in discounted value. The AETR thus indicates how much revenue a fiscal regime raises and is one of the definitions of "government take."

      $$AETR = \frac{NPV(Gov\ Revenue)}{NPV(Revenue - Exploration - Dev\&ReplacementCapex - Opex - Decomm)}$$

   iii. It is not reasonable to assume that most ISA contractors will not pay CIT to their Sponsoring States. The two contractors whose Sponsorship Agreements are cited by the AG (Nauru Ocean Resources, Inc (NORI) and Tonga Offshore Mining Limited (TOML)) expect to pay taxes in other jurisdictions and the zero CIT in the Sponsoring State Agreements was an accommodation by the small developing island states in the absence of double-taxation treaties. NORI and TOML have both committed to paying CIT to their respective Sponsoring States, the Republic of Nauru and the Kingdom of Tonga and are negotiating with these Sponsoring States to amend their Sponsorship Agreements to reflect this commitment.

7. **Inferring ISA royalty payments from the ETR range**: In principle, accepting average ETR range for the same or similar minerals as a metric for assessing fairness and competitive (dis)advantage at the pre-commercial phase of the industry allows us to infer the value of payments due to the ISA based on the current MIT model as follows:

i. Establish an ETR range prevailing in respect of land-based mining of the same or similar minerals. *[For illustration purposes, we assume it is 30.9-70.7% or a median of 39.2%. We have taken this range from Figure 1A below that shows average ETRs on an undiscounted basis as per March 2022 analysis by IMF. Figure 1B shows that based on 2022 production, this data set covers most of the world's land-based mine production of nickel, copper and cobalt but only quarter of manganese—an issue that can be remedied by adding South Africa and Gabon AETR estimates into this data set.]*

ii. Assume the same ETR range for ISA contractors. [*For illustration purposes,* we assume *30.9-70.7% or a median of 39.2% as above*.]

iii. For the purpose of inferring the payment due to the ISA, assume that ISA contractors will pay similar rates of CIT and other payments to their Sponsoring State. [*For illustration purposes,* we assume *25%*.]

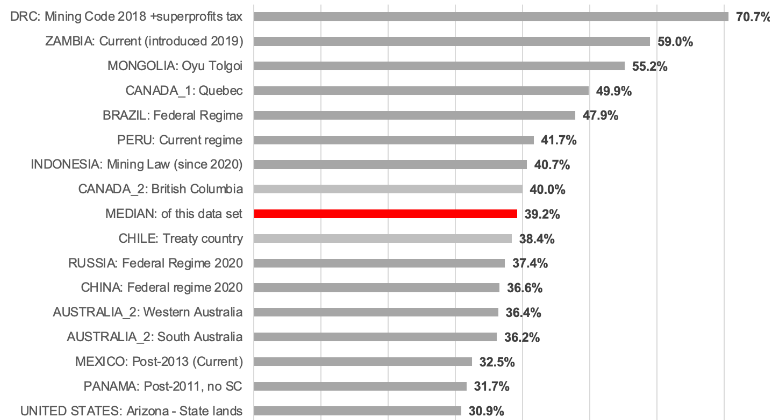
iv. "Payment due to the ISA" equals "ETR range" less "CIT and other payments to the Sponsoring State." [*For illustration purposes, we use the median of the range or 39.2%. Then the value of payment due to the ISA = 39.2% median of the ETR range minus 25% Sponsoring State payments, or 14.2% on lifetime profits of a DSM project.]*

v. This total inferred royalty payment due to the ISA over lifetime of a DSM project can then be translated into stages and rates depending on the type of payment system chosen (see paragraphs 16-18 below).

FIGURE 1A

EFFECTIVE TAX RATES IN LAND-BASED MINING JURISDICTIONS OF SAME OR SIMILAR MINERALS

Based on analysis by the IMF and the information available in December 2021.
AETRs shown are undiscounted.



- IMF analysis is based on Fiscal Analysis of Resource Industries (FARI) Methodology. A technical note and manual can be found here (see page 37 for AETR formula): https://www.imf.org/external/pubs/ft/tnm/2016/tnm1601.pdf
- Proper evaluation of fiscal regimes for extractive industries requires economic and financial analysis at the project level, and FARI is an analytical tool that allows such fiscal regime design and evaluation. The FARI framework has been primarily used in IMF's Fiscal Affairs Department's advisory work on fiscal regime design: it supports calibration of fiscal parameters, sensitivity analysis, and international comparisons.

Source: Analysis by the Fiscal Affairs Department of the International Monetary Fund presented in Figure 8 on page 26 of March 2022 IMF Country Report No 82/22, "Peru: Technical Assistance Report—Proposals for the 2022 Tax Reform—Mining Sector Fiscal Regime, Capital Gains, and IGV on Digital Services. https://www.imf.org/-/media/Files/Publications/CR/2022/English/1PEREA2022002.ashx

FIGURE 1B

LAND-BASED MINE PRODUCTION OF SAME OR SIMILAR MINERALS (tonnes/%)

Covered by the IMF dataset for AETRs		71%			80%			87%			24%
NICKEL	**2022e**	**%**	**COPPER**	**2022e**	**%**	**COBALT**	**2022e**	**%**	**MANGANESE**	**2022e**	**%**
Indonesia	1,600,000	49%	Chile	5,200,000	24%	DRC	130,000	70%	South Africa	7,200,000	36%
Philippines	330,000	10%	Peru	2,200,000	10%	Indonesia	10,000	5%	Gabon	4,600,000	23%
Russia	220,000	7%	DRC	2,200,000	10%	Russia	8,900	5%	Australia	3,300,000	16%
New Caledonia	190,000	6%	China	1,900,000	9%	Australia	5,900	3%	China	990,000	5%
Australia	160,000	5%	United States	1,300,000	6%	Canada	3,900	2%	Ghana	940,000	5%
Canada	130,000	4%	Russia	1,000,000	5%	Cuba	3,800	2%	India	480,000	2%
China	110,000	3%	Indonesia	920,000	4%	Philippines	3,800	2%	Ukraine	400,000	2%
Brazil	83,000	3%	Australia	830,000	4%	Madagascar	3,000	2%	Brazil	400,000	2%
United Sates	18,000	1%	Zambia	770,000	4%	Papua New Guinea	3,000	2%	Cote d'Ivoire	360,000	2%
Other countries	440,000	13%	Mexico	740,000	3%	Turkey	2,700	1%	Malaysia	360,000	2%
			Kazakhstan	580,000	3%	Morocco	2,300	1%	Mexico	230,000	1%
			Canada	530,000	2%	China	2,200	1%	Georgia	220,000	1%
			Poland	390,000	2%	United States	800	0%	Burma	200,000	1%
			Other countries	3,400,000	15%	Other countries	5,200	3%	Vietnam	150,000	1%
									Khazakstan	110,000	1%
									Other countries	150,000	1%
TOTAL	3,281,000	100%	TOTAL	21,960,000	100%	TOTAL	185,500	100%	TOTAL	20,090,000	100%

- The AETR data set published by the IMF in March 2022 under-represents production of manganese.
- This could be remedied by performing the AETR analysis for just two additional countries – South Africa and Gabon – which would bring the total manganese coverage from the current 24% to 83%.

Source: USGS, 2023 Commodity Summaries, https://pubs.usgs.gov/periodicals/mcs2023/mcs2023.pdf

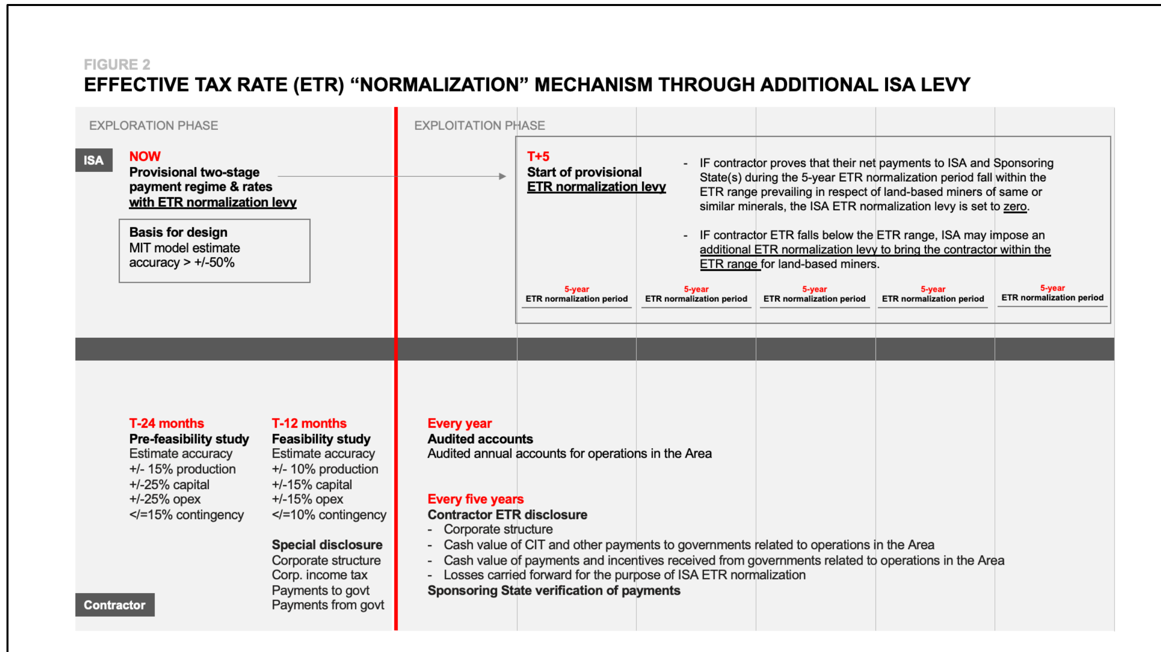
8. **Introducing additional ETR "normalization" mechanism**: In its Aug 2022 submission, the AG proposes a normalization mechanism to guard against potential avoidance and minimization of taxes on activities in the Area by the ISA contractors and ensure ISA Contractors pay their fair share to the ISA and Sponsoring States. This mechanism envisions that an additional and separate ISA royalty set at a rate of 6% of ad valorem gross metal value (chosen because it is equivalent to 25% CIT in the MIT model) is put in place from the 5th year of Commercial Production against which the ISA Contractor can credit actual and verified cash payments of CIT to the Sponsoring State. We support AG's intent to create a mechanism for an additional financial levy by the ISA in cases where the ISA contractors' ETR on activities in the Area fall outside the ETR range prevailing in respect of land-based mining of the same or similar minerals. However, we do not support the specifics of the mechanism proposed by the AG because we believe it is based on an inaccurate assumption (i.e., "the miner does not pay sponsoring state corporate income tax on their profits from mining in the Area") and proposes a rigid mechanism that can result in unintended consequences and failure to meet the objectives set out in UNCLOS and 1994 Implementation Agreement:

   - If the ISA Contractor's cash payments to their Sponsoring State(s) exceed the value of the 6% additional ISA royalty, there is no mechanism for the ISA Contractor to claw back any amounts paid above the 6% additional royalty. As a result, the ISA Contractor can end up paying an ETR that exceeds the ETR range prevailing in respect of land-based miners of the same or similar minerals.
   - If the ISA Contractor's actual ETR falls within the ETR range prevailing in respect of land-based miners of the same or similar minerals (e.g., *30.9-70.7%)* but the cash value of their payments to their Sponsoring States is lower than the 6% additional ISA royalty, there is no recource for the ISA Contractors to claim the difference back from the ISA, again resulting in ISA Contractor's ETR exceeding the range prevailing in respect of land-based miners.
   - If the ISA Contractor is much more profitable than currently expected, it's possible that limiting their additional ISA royalty to 6% would result in an ETR that falls below the ETR range prevailing in respect of land-based miners.

   The above described cases are plausible because the level of estimate accuracy in the MIT model is low (as discussed in paragraph 11 below) and real world project economics could diverge from current assumptions used to set a 6% additional ISA royalty. Even if the MIT model

outcomes comported with real-world DSM project economics, the proposed mechanism would effectively dictate a 25% Sponsoring State CIT, impinging on Sponsoring State sovereignty to set their tax policy.

We propose a modified mechanism (see Figure 2 below):



i. ISA will be entitled potentially to an additional payment from the ISA Contractor ("ETR normalization levy") if the contractor's ETR on operations in the Area falls below the ETR range prevailing in respect of land-based mining of the same or similar minerals.

ii. As proposed by the AG, this additional ETR normalization levy will come into force five years after the first day of Commercial Production - the provisional timing of when ISA Contractors are expected to depreciate their initial capital investment, scale up technology and establish an ecosystem of suppliers.

iii. To minimize additional administrative burden on the ISA, ETR normalization reviews for each ISA Contractor should take place every five years based on the ETR range determined by the Economic Planning Commission (see paragraph 10 below).

iv. Twelve months before the start of Commercial Production, the ISA Contractor will submit to the ISA a detailed disclosure of the corporate structure used to conduct activities in the Area (including the entity that will hold the ISA Exploitation Contract, its subsidiaries, sister companies and third-party companies involved in the Contractor activities in the Area).

v. Following the start of Commercial Production and on an annual basis, the ISA Contractor will submit to the ISA its audited accounts for the operations in the Area.

vi. Every five years starting with the 11th year of Commercial Production, the contractor will disclose to the ISA all payments made to the Sponsoring State(s) (e.g., production-linked fees, administration fees, taxes, levies or royalties) and payments received from the Sponsoring State(s) (e.g., R&D credits, government finance or guarantees, etc) related to the contractor's exploitation activities in the Area during the preceding five-year ETR normalization period. To increase the confidence level in contractor disclosure, the ISA could require the Sponsoring State(s) to verify ISA Contractor disclosure on net payments to the Sponsoring State(s).

vii. If the ISA Contractor proves to the ISA that their ETR for the preceding five-year ETR normalization period falls within the ETR range prevailing in respect of land-based miners of same or similar minerals, the ISA ETR normalization levy is set to zero. [*For illustration purposes, if the target ETR range was determined to be 30.9-70.7% / 39.2% median and Contractor proves that they paid the equivalent of 20% to the ISA + 25% to the Sponsoring State = 45% ETR, then the levy due to the ISA is set to zero.]*

viii. If the ISA Contractor ETR for the preceding five-year ETR normalization period falls below the ETR range prevailing in respect of land-based miners of same or similar minerals, ISA may impose an additional ETR normalization levy to bring the contractor within the ETR range for land-based miners. [*For illustration purposes, if the target ETR range was determined to be 30.9-70.7% and Contractor proves that they paid the equivalent of 20% to the ISA + 5% to the Sponsoring State = 25% ETR, then the ISA may decide to impose an additional levy of 14.2% to bring the Contractor in line with the 39.2% median of the 30.9-70.7% ETR range.]*

ix. If in any given five-year ETR normalization period the Contractor makes a loss on their exploitation activities in the Area, no additional levy will be due to the ISA. The Contractor will be entitled to carry their loss forward into the next five-years ETR normalization period.

9. **Assessing average ETR for ISA Contractors**: Any assessment of average ETR should rely on a well-established methodology like IMF's Fiscal Analysis of Resource Industries (FARI) Methodology (see page 37 in IMF's Technical Note and Manual at https://www.imf.org/external/pubs/ft/tnm/2016/tnm1601.pdf).

The unique aspect of applying this methodology to ISA Contractors is the fact that—unlike land-based miners of the same or similar minerals—ISA Contractors will make payments to both ISA and their Sponsoring State(s) related to Contractor's operations in the Area. For the avoidance of doubt, we propose that "net payments to government" ("GovRev" in the IMF formula for AETR) for the purpose of ETR assessments of ISA Contractors include

i. ISA Contractor payments to the ISA, including:
   - Royalty
   - Environmental levy (including, contribution to the ISA environmental compensation fund)
   - Administrative and other payments.

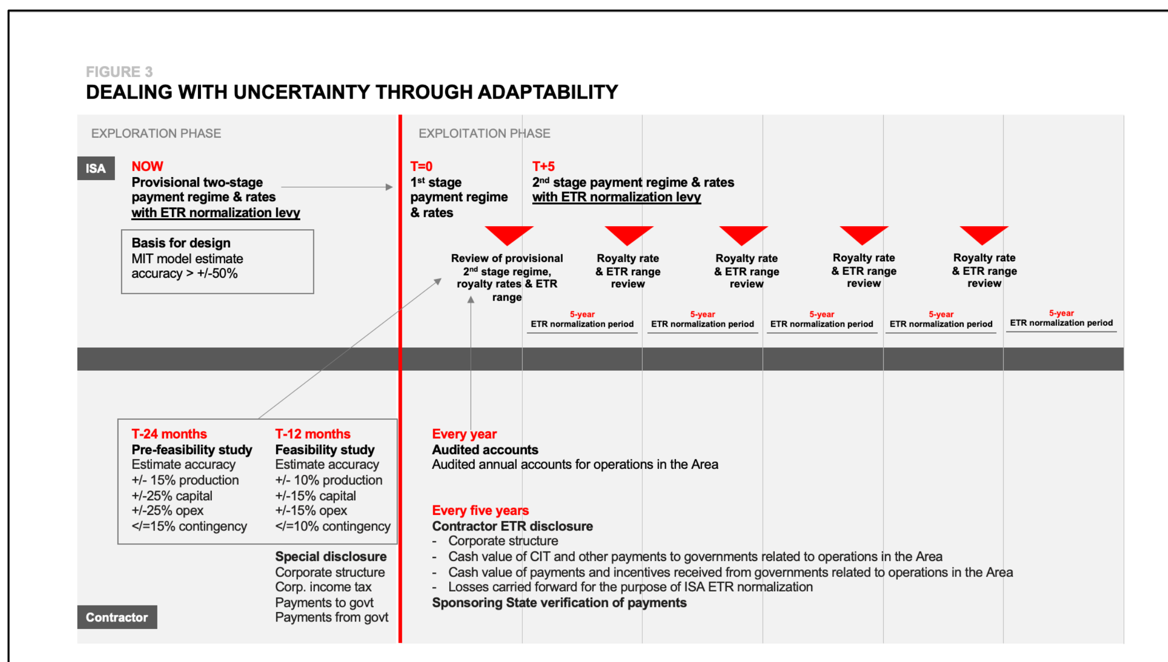
ii. ISA Contractor payments to the Sponsoring State(s), including:
   - Production-linked payments and royalties
   - CIT
   - Other payments (e.g., other taxes, dividends, bonuses, infrastructure payments, and entitlements).

iii. Net of incentives from the Sponsoring State(s) to the ISA contractor, including:
   - Deductions from the CIT for expenditures deemed eligible by Sponsoring State(s) (e.g., R&D, production asset capital, capacity building, technology transfer, etc.)
   - Government loans and guarantees
   - Other forms of fiscal and non-fiscal incentives.

In relation to 9. iii. above, for the avoidance of doubt, the value of CIT deductions should be credited to the overall ETR calculation. This is in order that Sponsoring State(s) may, through their national tax codes, implement domestic policies through fiscal mechanisms including tax relief for capital investment and R&D.

10. **ETR range for ISA Contractors**: For the purpose of modelling the impacts of proposed ISA payment regimes and finalizing Draft Regulations and Standards & Guidelines, we support using the 39.2% median ETR (see Figure 1A above) or commissioning a similar analysis that includes average ETRs for South Africa and Gabon to better reflect the mix of land-based jurisdictions of same or similar minerals. We also propose that once the Draft Regulations have been adopted, the ISA's Economic Planning Commission should be mandated to conduct or commission regular independent third-party reviews of the ETR range prevailing in respect of land-based mining of the same or similar minerals (see paragraphs 11 and 12 below).

11. **Fairness and (dis)advantage in the face of high level of uncertainty**: It's important that all stakeholders acknowledge the challenge of designing a fair ISA payment regime and setting rates of payments in the absence of real-world data from commercial operations in the Area. While MIT drew on inputs from several contractors in designing their model, these inputs included just one published standards-compliant (Canadian 43-101 and US SEC SK1300) preliminary economic assessment of a DSM project signed off by Qualified Persons. The accuracy level for such an assessment is +/- 50%, suggesting most of the inputs in the MIT model would have even lower accuracy levels. And yet—despite high level of uncertainty about DSM project economics—a payment regime needs to be put in place before any commercial exploitation contracts can be granted. We believe a pragmatic way to deal with this high level of uncertainty would be as follows (Figure 3 below):



i. **Put in place provisional payment regime and rates for the first five years**. We strongly believe that a two-stage approach is needed with reduced rates of payment imposed on contractors during the first five years of commercial operations to "attract investments and technology to the exploration and exploitation of the Area" (Article 13(1)(b), Annex III of UNCLOS). At this pre-commercial stage of development, without decades of actual economic performance to draw from, the industry faces greater uncertainties compared to the mature industry of land-based mining: development, build and operational cost uncertainty is much higher with nodule collection technology and processing technology still in the pilot phase and no commercial off-the-shelf solutions available to contractors offshore or onshore, while land-based miners enjoy access to established mining and processing technology and a well-developed ecosystem of suppliers; sovereign risk may be lower compared to certain land-based jurisdictions (as AG points out in their June 2022 submission citing one of the contractor's public

presentations) but regulatory uncertainty remains elevated in the Area until exploitation regulations have matured. We believe that it will take at least five years for contractors to scale and optimize technology, recover their investments in technology development and extensive environmental research, establish an ecosystem of suppliers and a market for a new type of feedstock (i.e., polymetallic nodules) and new intermediate products (e.g., Manganese silicate)—and ultimately get to a level-playing field with the mature industry of land-based miners of same or similar minerals. A provisional regime with lower ISA payments for the first five years (e.g., 15% ETR) and normalized payments thereafter (e.g., *30.9-70.7%* ETR range) are therefore justified in our view and arguably required by the Convention and the 1994 Agreement. We expect that during the first five years, most contractors will be starting at small volumes and ramping up gradually. As a result, only 10-15% or less of production over the contract term would be subject to lower ISA rates. We propose that the ISA reviews both the payment regime and rates at the end of the first five years based on much better-quality real-world data for the contractor operations in the area and an updated analysis of the ETR range prevailing for land-based miners of the same or similar minerals.

ii. **Impose continuous disclosure obligations.** The quality of project economics data available to the ISA will improve dramatically already 12-24 months before the start of Commercial Production with contractors submitting a pre-feasibility study as part of their exploitation Plan of Work (e.g., estimate accuracy required in SEC SK1300 mining standard – production: +/- 15%, capital and operating costs +/-25% with </=15% contingency) and a feasibility study 12 months before the start of Commercial Production (e.g., estimate accuracy required in SEC SK1300 mining standard – production: +/- 10%, capital and operating costs +/-15% with </=10% contingency). Once in production, the Authority should require annual submission of audited accounts for the Contractor's operations in the Area. Standards-compliant prefeasibility and feasibility studies and at least four years of audited accounts will give the Authority a greater insight into real-world project economics in the Area.

iii. **Regime and rate review at the end of the first five years**. Equipped with the above-mentioned real-world data for ISA Contractors and a new independent and current analysis of prevailing ETR rates for land-based miners of same or similar minerals, the Authority's Economic Planning Commission (EPC) should have the mandate to review both the practicality of the agreed regime and the fairness of the rates agreed for beyond the first five years in the light of the updated understanding of ISA Contractor economics and ETR rates for land-based miners of same or similar minerals. Based on this review, the EPCshould be empowered to propose to the Council changes both in the regime and the rates to ensure that the ISA payment regime delivers on the objectives outlined in UNCLOS and 1994 Implementation Agreement.

12. **Fiscal stabilization:** In its last undated submission, AG points out that "Draft Regulations 81 and 82 effectively provide contractors with fiscal stability for the 30-year term of an exploitation contract" and cites a recent IGF report that states that "periodic review of financial terms of extractive industry contracts is increasingly seen as best practice. Stabilisation of the financial terms for the tenure or a contract (up to thirty years in this case) is not.' We support this position and believe that 5-year rate reviews by EPC following the initial five years would ensure the principle of fairness to both ISA and contractors and enable the ISA to ensure that its rates of payments continue to be within the range of those prevailing in respect of land-based mining of the same or similar minerals—thereby delivering on the provisions of Article 8(1)(b) ("fair both to the contractor and Authority") and 8(1)(c) ("avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage").

13. **Financial imposition on profits or capital gains from direct and indirect transfers of exploitation rights:** In all three of its latest submissions, the AG advocates for a position to include a tax on capital gains accruing to the ISA Contractor from the direct and indirect transfers of exploitation rights. In principle, we support AG's position—in line with emerging best practice—that the Authority should share in the financial upside accruing to the ISA Contractor from the direct or indirect sale of exploitation rights. However, the mechanism proposed by the AG—"withholding tax of 25% on any gain made from the transfer of a 20% or greater interest in any entity which derives 50% or more of its value from the exploitation license"—raises several issues:

    i. First, while we can support the position that the Authority should be entitled to benefit from the appreciation of the exploitation rights in the Area, we cannot support the Authority benefiting from the IP developed by the ISA Contractor and other aspects of the business that might be sold as part of the overall transaction.

    ii. Second, we believe the low threshold of "20% or greater interest" will severely limit ISA Contractor project financing options—junior miners often use a sale of a stake in the project to raise funding to finance their project development or expansion. The mechanism proposed by the AG would divert 25% of capital raised this way from the project financing pool—this situation needs to be avoided.

    iii. Third, we need to make sure that internal group restructuring and reorganisations are not captured by these provisions.

    iv. Fourth, the proposed rate needs further validation through an independent study of CIT and capital gains tax rates prevailing in respect of land-based mining of the same or similar minerals. While in some jurisdictions, corporate capital gains are subject to CIT rates, in others the rates are lower (see PWC capital gains tax rates summaries).

    v. Fifth, we believe the withholding tax format would put the ISA Contractor at high risk of being double-taxed for the same capital gains—once by the Authority and again by the Sponsoring State (in case of direct transfers) or another jurisdiction (in case of indirect transfers). We view the ISA putting in place double-taxation treaties with Sponsoring States and other potentially relevant jurisdictions as unlikely, leaving the ISA Contractor no recourse against double taxation.

    To rectify for these issues, we propose an alternative mechanism:

    i. **Controlling stake as threshold:** The levy should be imposed on the gain related to exploitation rights from the transfer of a controlling stake (>50%) in any entity which derives 50% or more of its value from the ISA Exploitation Contract.

    ii. **Focus on the net value of exploitation rights:** The relevant base for the purpose of the levy would be the value of the exploitation rights net of development expenses to the point of sale. Other business elements that contributed to the valuation (i.e., price paid by the Transferee to the Transferor) like IP and knowhow, patent estate, physical production assets and on-land facilities, good will, etc should be excluded from the value relevant for the purpose of determining the base for the ISA transfer levy.

    iii. **Notification and approval of direct and indirect transfer:** The ISA Contractor will be required to notify the Authority of the intent to transfer directly or indirectly a controlling stake in the entity holding the ISA Exploitation Contract within two weeks of the transaction. The payment of the transfer levy to the ISA can be a Condition Precedent (CP) for the Authority granting its approval for such a transfer.

iv. **Indemnity by the Authority:** The Authority will indemnify the Contractor against any double-taxation of the ISA exploitation rights. If the ISA Contractor can prove that they have been taxed twice on the same capital gains related to the direct or indirect transfer of ISA exploitation rights, the ISA will compensate the Contractor for the double-paid amount.

14. **Revisiting AG's nine tests**: In the context of the above positions, we submit the following comments and proposed modifications of the AG's nine tests set out in the AG's June 2022 submission:

Test	Comment
Test 1: The Fair Compensation to Mankind	We believe this test is passed by any payment regime and rates that have been defined - Using an ETR range for land-based miners of same or similar minerals as a metric for judging fairness and (dis)advantage - Using ETR "normalization" mechanism described above as a means for the ISA to eradicate tax avoidance and minimization among the ISA Contractors.
Test 2: The Whenever Miners make Profits Mankind must be Compensated	We believe this test is passed if the above discussed provisions on direct and indirect transfers of exploitation right are implemented in the Draft Regulations.
~~Test 3: The Economic Efficiency~~ New Test 3: Attracts investments and technology to the exploitation of the Area	With the introduction of the ETR range as the controlling metric in defining the ISA financial regime, hurdle rates are no longer relevant for the purpose of defining payment rates using the MIT model. We would like to propose to replace this test with a new test based on Article 13(1)(b), Annex III of UNCLOS. We see this stated ISA objective to attract investments to the Area as the main rationale for a lower-rate first stage of the payment regime. As we discuss above, pre-commercial DSM industry is subject to high levels of uncertainty compared to a mature land-based mining industry and will require lower rates of payments to attract investment during the startup phase of Commercial Production. In their August 2022 submission, the AG interprets Article 13(1)(b) referenced above as providing for "…incentives (**<u>not financial incentives</u>**) for objective 13.d which refers to the Enterprise, technological transfer and training only. Article 13 does not provide for incentives to be provided for the other objectives specified in it, such as attracting investment in the Area. Moreover, the subsidisation of contractors through the provision of subsidies does not concord with international best practice in the regulation of extractive industries and would not be beneficial to humankind. The Authority should be encouraging efficient, low cost, profitable contractors that can and should pay taxes: not inefficient high-cost contractors that can only mine if they receive financial incentives." We disagree with this interpretation: the title of the Article 13 is "**<u>Financial</u> Terms of Contracts.**" The fact that 13(1)(d) references the Enterprise, does not imply that all other sub-paragraphs in the Article 13(1) are only applicable to the Enterprise—indeed, only two subparagraphs (d and e) out of six explicitly reference the Enterprise. Furthermore, paragraph 14 allows the Authority to adopt rules, regulations and procedures relating to incentives (which could include financial incentives – direct reference in 13(1)(f)) to further the objectives set out in paragraph 1 of Article 13. Importantly, paragraph 14 requires that the recommendations of the Economic Planning Commission and the Legal and Technical Commission (LTC) be taken into account in the adoption of any rules relating to incentives. We believe the LTC acted in line with these provisions when proposing a two-stage royalty in the original draft regulations. Incentives contemplated by Article 13 are not subsidies per se. In a land-based context, national fiscal regimes do provide fiscal incentives, for example to attract investment, through tax incentives in the form of tax stability agreements or accelerated tax deprecation. Incentives could also be in the form of tax or other credits for R&D investment. This could be of interest in connection with investment in environmental protection technology beyond the regulatory requirements and promoting innovative practices (as contemplated in regulation 3(f)(vi)).

Test	Comment
	Article 13(1)(b) explicitly states an objective, this objective is aligned with common practice in many land-based regimes—we believe it merits being included into AG's nine tests.
Test 4: The Rates of Payment	We believe this test is passed by any payment regime and rates that have been defined - Using ETR range for land-based miners of same or similar minerals as a metric for judging fairness and (dis)advantage - Using ETR "normalization" mechanism described above as a means for the ISA to eradicate tax avoidance and minimization among the ISA Contractors.
Test 5: The Progressivity	We agree with the AG position that a payment regime with a rate that increases or decreases with metal prices meets this test only partially (ISA does not get higher share of profits if they increase due to lowering of the costs). However, as AG acknowledges, this needs to be traded off against the complexity of administering a profit-share based payment regime. It will likely be easier for the ISA to start with a progressive ad valorem royalty and review if a regime shift to a profit-based system would be manageable to implement after the first five years of Commercial Production.
~~Test 6: The Full Compensation to Land Based Mining Countries~~	As the AG points out, "the 1994 Implementing Agreement provides for an economic assistance fund… to be financed from a portion of the revenues the ISA collects from miners, and its purpose is to compensate developing land-based mining states whose economies have been negatively affected by DSM." We believe that this issue should be dealt with as part of the discussion on the allocation of the ISA royalties derived from ISA Contractors and is not relevant for the purpose of designing an ISA payment regime and rates.
Test 7: The Simple to Audit and Administer	We agree with AG that OEWG options 3 and 4 are easy to administer. We also acknowledge that the ETR normalization mechanism, managing contractor disclosure and regular rate reviews, fiscal impositions related to direct and indirect transfers of exploitation rights would introduce a degree of complexity into the Authority's operations. However, we believe that the trade-off between increased complexity and achieving other UNCLOS/1994 Agreement objectives are worth it.
Test 8: The Knowledge and Transparency	We believe that extensive disclosure requirements we propose to impose on ISA Contractors above – if adopted—would meet this test.
Test 9: The Sensitivity Test.	We believe that we have proposed a practical way to meet the sensitivity test by imposing high disclosure requirements on the ISA Contractors, mandating ISA to do a payment regime and rate review at five-year mark and regular 5-year rate-reviews thereafter.

DEFINING PROVISIONAL FINANCIAL PAYMENT REGIME AND RATES

15. **Revisiting AG starting position**: In its June 2022 submission, the AG shows that all four options currently being discussed by the OEWG fail to pass the AG's proposed nine tests. We believe that the accommodations outlined in the previous section (e.g., using ETR range as a metric for comparing ISA Contractors with land-based miners of same and similar minerals, introducing ETR "normalization" mechanism in the form of a provisional additional levy, etc) allow us to return to some of the OEWG payment options and modify them in a way that can meet most of AG's tests.
16. **Revisiting OEWG payment regime options**: We support Option 4 as the basis for defining a provisional payment regime and rates:
    i. ~~Option 1: a one stage fixed ad valorem only royalty~~ – is not flexible and variable enough to accommodate changing market conditions;
    ii. ~~Option 2: a two-stage time-varying ad valorem only royalty~~ – does not contain required progressivity / variability;

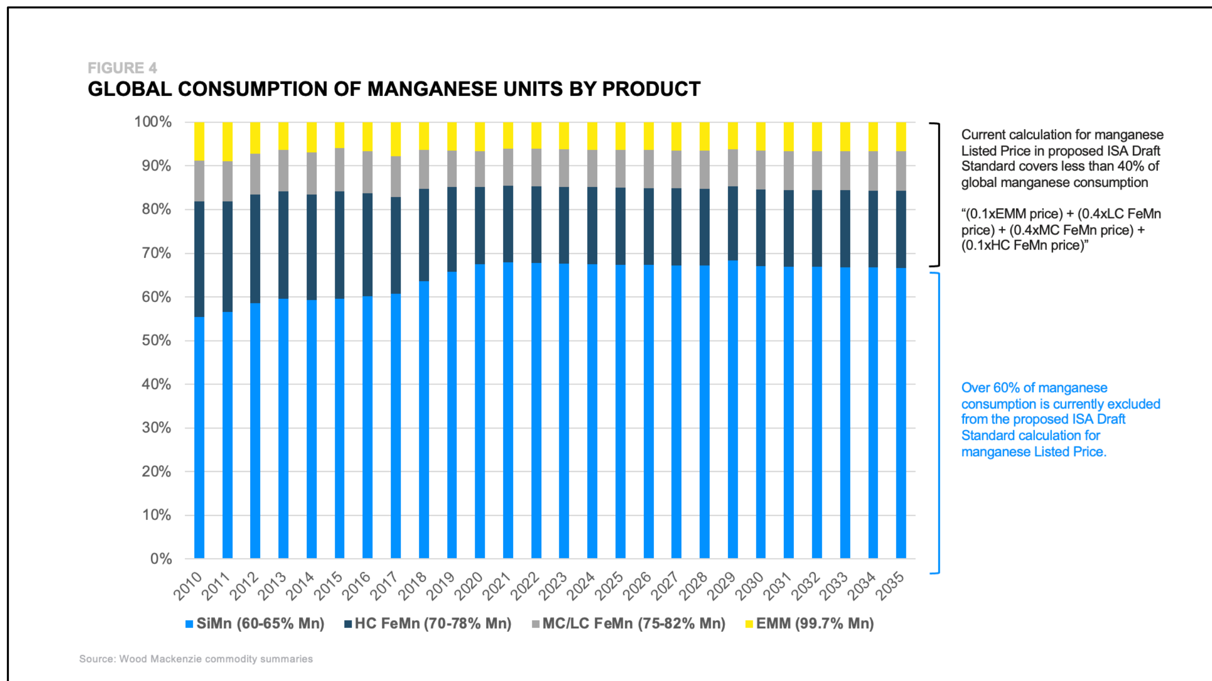
iii. ~~Option 3: a two-stage blended ad valorem and profit share system~~ – could be considered but it could be more difficult to administer, albeit we do recognize that the normalization mechanisms described above do introduce a certain level of complexity and administrative burden for the regulator.

iv. Option 4: a two-stage progressive / variable price-varying ad valorem only royalty – contains sufficient number of elements to serve as a reasonable base case to build on.

17. **Manganese price**: In their latest submission, AG recommends that the base for the Manganese royalty is calculated using electrolytic manganese metal (EMM) prices because it's "simple to understand," "it is unlikely that nodules will be processed to the same grade" and "contractors are not legally responsible, and may not even know, the grade to which the manganese in the nodules is processed." We do not disagree with any of these arguments. However, we cannot support the AG's conclusion that Manganese royalty should be calculated using EMM prices for one simple fact: EMM is a niche product that accounts for just 6% of the total Manganese market (see Figure 4 below). Manganese is fundamentally different from Copper, Nickel and Cobalt markets where high-purity metal product formats account for most of the market. By contrast, manganese is largely used in the steel industry as an alloying agent and 94% of all Manganese units are never refined to high-purity EMM. Asking ISA Contractors to pay Mn royalty using EMM prices is akin to asking a diamond miner to pay a royalty on the price of the biggest, best clarity and best colour diamonds that account for a fraction of overall production. We propose two alternative ways forward:

    i. **Mn ore price** - calculate Mn royalty using medium-grade Mn ore prices. Mn ore is closely comparable to nodules and its market price is easily discoverable on several publicly traded commodity exchanges.

    ii. **Nodule ore price** – alternatively, we can set aside ad valorem royalty on gross metal value and use a nodule ore price instead. This approach aligns with the above-referenced AG observations that "contractors are not legally responsible, and may not even know, the grade to which the manganese in the nodules is processed." Indeed, once nodule processing ecosystem is developed, ISA Contractors may simply choose to sell nodules to third-party processors. Nodules sales contracts will be submitted to the ISA for review and potential audits to verify transactions took place at an arm's length and contract sales price represents fair value. For the purpose of deriving provisional rates for the ISA regulations, MIT nodules transfer price can be used as a proxy for nodule ore value. With lower base for royalty, payment rates would need to increase accordingly.



18. **Arriving at provisional payment rates for option 4**: We suggest that the OEWG Chair requests the MIT team to model two scenarios for the purpose of inferring the value of the ISA payment and rates that would deliver these outcomes:

iii. **Scenario 1: Two-stage royalty on gross Ni, Cu, Co metal and Mn ore value**

- Sponsoring State CIT 25%
- ETR 15% for stage 1 (first 5 years)
- ETR range 30.9-70.7% or median of 39.2% for stage 2 (remaining 25 years)
- Price of medium-grade Manganese ore as the basis for Mn royalty
- Keep the same price-dependent rate variability for stage 2 as per current Option 4.

iv. **Scenario 2: Two-stage royalty on nodule ore price**

- Sponsoring State CIT 25%
- ETR 15% for stage 1 (first 5 years)
- ETR range 30.9-70.7% or median of 39.2% for stage 2 (remaining 25 years)
- Nodule transfer price in the MIT model as a proxy for nodule ore price
- Keep the same price-dependent rate variability for stage 2 as per current Option 4.

DRAFT REGULATIONS: AMENDED TEXT FOR FINANCIAL REGULATIONS IN THE DRAFT REGULATIONS AND STANDARDS

The Contractors suggest that the following amendments are made to DRSDS and BNFTC to reflect the proposals contained in the Contractor's response to the AG submission on the payment regime. The amendments are grouped by issue as outlined in the AG's Speaking Notes on the payment regime.

Source	Reg	Amended Text Marked in Track Changes	Explanation and Commentary
ISSUE 1: FISCAL IMPOSITION ON PROFIT OR GAINS ATTRIBUTABLE TO DIRECT AND INDIRECT TRANSFER OF EXPLOITATION RIGHTS IN THE AREA			
	Draft Regulation 23bis	**Financial imposition on profits or capital gains from the direct transfer of exploitation rights** 1. A Contractor may be required to pay a levy on profits or capital gains derived from a direct transfer of rights if there is a transfer of rights under an exploitation contract pursuant to Regulation [23]. 2. The levy on profits or capital gains derived from the direct transfer of exploitation rights shall be applicable only if a Contractor completes a transfer of over 50% of its rights and obligations under an exploitation contract to a transferee. 3. The levy will not apply if the capital raised through a partial transfer of exploitation rights is used to finance commercial production under an exploitation contract. 4. If the levy is applicable, the levy shall equal [XX%] of the Contractor's profits or capital gains from the transfer of the exploitation contract. 5. Any profits or capital gains arising from the direct transfer of exploitation rights under an exploitation contract shall be the amount received by the Contractor for the transfer minus all actual and direct exploitation and development expenditures incurred by the Contractor under the exploitation contract. 6. The Authority may issue Standards and Guidelines providing further details for the administration, enforcement and calculation of the levy on profits or capital gains from the direct transfer of exploitation rights.	We support the AG's notion of a financial imposition on profits or capital gains from the direct and indirect transfer of rights under an exploitation contract. We propose that the level of interest or portion that triggers a levy on profits or gains from direct or indirect transfer of rights to be a controlling stake (greater than 50%). We also propose that the refund mechanism for an indirect transfer is deleted and that the onus on calculation and payment is on the transferor. This removes the requirement for the transferor to seek a refund of the levy from the Authority and for the transferee to obtain confidential information concerning the capital contributed by the transferor. In accordance with the development of the Draft Exploitation Regulations, the contractors propose that matters dealing with: (i) calculation; (ii) notification; (iii) indemnity are contained in the Standard. We have replaced AG's proposed 25% levy with [XX%] as we propose to conduct a review of CIT and Capital Gains Tax rates prevailing for land-based miners of same and similar minerals.

	Draft Regulation 23ter	**Financial imposition on profits or capital gains from the indirect transfer of exploitation rights** 1. A transferor may be required to pay a levy to the Authority on profits or capital gains derived from the direct and indirect transfer of more than a 50% interest in any entity which derives 50% or more of its value, directly or indirectly from rights under an Exploitation Contract. 2. Any series of transfers, undertaken concurrently, that could have been undertaken as a single transfer, but which were undertaken as a series of transfers so as, in the reasonable opinion of the Authority, to avoid payment of the levy, shall be treated as if they were a single transfer. 3. The levy will not apply if the capital raised through an indirect transfer of exploitation rights is used to finance commercial production under an exploitation contract. 4. If the levy is applicable, the levy shall equal [XX%] of the transferor's profits or capital gains from the indirect transfer. 5. The transferor shall be responsible for: a. calculating the amount of the profits or capital gains as equal to the gross consideration to be received minus the capital contributed by the transferor. b. calculating the amount of the levy on any profit or capital gains from the indirect transfer of exploitation rights. c. informing the Authority of the levy on profit or capital gains from the indirect transfer of exploitation rights due; and d. paying the levy to the Authority. 6. The Authority may issue a compliance notice to a Contractor for the indirect transfer of an exploitation contract where the transferor has: a. failed to inform the Authority, in accordance with Regulation 24 of an indirect transfer to which a levy is applicable. b. intentionally underestimated the liability for a levy on any profits or gains; or c. failed to pay the levy on any profits or gains in accordance with the Standard and any applicable Guidelines. 7. The Authority may issue Standards and Guidelines providing further details for the administration, enforcement and calculation of the levy on any gains from the indirect transfer of exploitation rights.	

	Standard	**1. Setting the levy** The Economic Planning Commission shall conduct a review of comparable capital gains tax systems every five years and shall recommend, for the approval of the Council, the applicable levy comparable to land-based mining jurisdictions for the financial imposition on profits or capital gains from the direct or indirect transfer of exploitation or equivalent rights. **2. Calculating profits or capital gains from a direct and indirect transfer of exploitation rights** The relevant base for the purpose of calculating the applicable levy on profits or capital gains from the direct or indirect transfer of exploitation rights is the proceeds received by the transferor for the exploitation rights, and in the case of direct transfers net of development expenses, to the point of sale. Other business elements that contributed to the valuation (i.e., price paid by the transferee to the transferor) like IP and knowhow, patent estate, physical production assets and on-land facilities, good will, etc shall be excluded from the value relevant for the purpose of determining the leviable base for the levy on profits or capital gains from the direct or indirect transfer of rights. **3. Notification requirements** A Contractor shall be required to notify the Authority of the intent to transfer directly or indirectly a controlling stake in the Contractor in accordance with Regulation 23. The payment of the levy on profits or capital gains from the direct transfer of exploitation rights to the Authority is a condition precedent for the Authority to provide its consent to the transfer under Regulation 23. **4. Indemnity against double taxation** The Authority shall indemnify a Contractor against any double taxation incurred as a result of the indirect or direct transfer of the Contractor's rights under the exploitation contract. The onus is on a Contractor to prove that the Contractor has been taxed twice on the same profit or capital gains related to the direct or indirect transfer of its exploitation rights. The Authority shall compensate the Contractor for the double-paid amount. **5. Timing of payment** If a levy is payable on any profits or gains for the direct or indirect transfer of exploitation right, payment shall be made within [120] days of the transfer. **6. Exclusions** A Contractor is excluded from the requirement to pay a levy to the Authority a. if the transfer was conducted for the purpose of internal group restructuring and reorganisation. b. If the proceeds are used to finance commercial production under exploitation contract.	

ISSUE 2: ADDITIONAL “ETR NORMALIZATION” LEVY MECHANISM			
BNFTC	Draft Regulation 64	**Contractor shall pay royalty** 1. A Contractor, from the date of commencement of Commercial Production, shall pay a royalty in respect of the mineral-bearing ore sold or removed without sale from the Contract Area as determined in appendix IV to these regulations. 2. The date of commencement of Commercial Production, will be the date notified according to Regulation 27(2). 3. In addition to the royalty referred to in Regulation 64(1), a Contractor may be required to pay an additional normalization levy as determined in appendix IV to these regulations.	Following the approach established by the Chair of the OEWG, we have anchored the normalization levy in the Regulations, with further details concerning its calculation in Appendix IV and the Standard. An explanation of the reasoning and commentary for the contractors’ preferred approach is contained within the Contractors’ response to the AG Submission on payment regime.
BNFTC	Appendix IV	**3. Determining normalization levy** The normalization levy may be payable to the Authority every five years and assessment shall commence in the financial year following five years after the first day of Commercial Production. The levy shall be calculated in accordance with the Standard and taking into account the Guidelines.	

	Standard (Definitions)	**Contractor's Effective Tax Rate** on operations in the Area is the ratio of the Net Present Value (NPV) of net payments made by a Contractor to Sponsoring State(s) and the Authority divided by the NPV of revenue less exploration costs, development and replacement capital expenditure (Capex), operating expenditure (Opex) and decommissioning costs. $$\text{ETR} = \frac{\text{NPV (Net Payments to ISA and Sponsoring State(s))}}{\text{NPV (Revenue – Exploration – Development \& Replacement Capex – Opex – Decommisioning costs)}}$$ For the purpose of determining the Effective Tax Rate, Net Payments to the ISA and Sponsoring State(s) include: 1. Contractor payments to the Authority, including: a) Royalty b) Environmental levy, including contributions to the Environmental Compensation Fund c) Administrative and other payments; and 2. Contractor payments to the Sponsoring State(s), including: a) Production-linked payments or royalties b) Corporate Income Tax c) Other payments (e.g., other taxes, levies, dividends, bonuses, infrastructure payments, and entitlements). 3. Net of incentives from the Sponsoring State(s) to the Contractor, including. a) Deductions from the CIT for expenditures deemed eligible by Sponsoring State(s) (e.g., R&D, production asset capital, capacity building, technology transfer, etc.) b) Government loans and guarantees c) Other forms of fiscal and non-fiscal incentives. **Effective Tax Rate Range** means a range of effective tax rates prevailing in respect of land-based mining of the same or similar minerals using comparable categories used to determine the Contractor's Effective Tax Rate, set by the Economic Planning Commission, as approved by the Council and reviewed every five years by an independent third party.	

	Standard	**6. Calculation of the Normalization Levy** 1. A Contractor shall submit to the Authority twelve months before the start of Commercial Production, a detailed disclosure of the corporate structure used to conduct activities in the Area (including the entity that holds the Exploitation Contract, its subsidiaries, sister companies and third-party companies). 2. In accordance with these regulations, following the start of Commercial Production and on an annual basis thereafter, a Contractor shall submit to the Authority its audited accounts for operations in the Area. 3. For the purposes of determining a Contractor's Effective Tax Rate, every five years commencing in the 11th year of Commercial Production, a Contractor shall disclose to the Authority all payments made to a Contractor's Sponsoring State(s) and payments received from the Sponsoring State(s) related to a Contractor's exploitation activities in the Area during the preceding five-year period. A Contractor's net payments to the Sponsoring State(s) shall be verified by the Sponsoring State(s). 4. If a Contractor demonstrates to the Authority that their Effective Tax Rate for the preceding five-year period falls within the Effective Tax Rate Range, the normalization levy payable to the Authority is zero. 5. If a Contractor demonstrates to the Authority that their Effective Tax Rate for the preceding five-year period falls below the Effective Tax Rate Range, the Authority shall impose an additional normalization levy to bring a Contractor within the Effective Tax Rate Range. 6. If an additional normalization levy is due to the Authority, the levy shall be payable to the Authority within [90] days. 7. If in any year of Commercial Production, a Contractor makes a loss on their exploitation activities in the Area, no additional normalization levy shall be due to the Authority. The Contractor shall be entitled to carry their loss forward for five years for the purposes of calculating any additional normalization levy to the Authority in subsequent years.	

ISSUE 3: BASIS FOR ROYALTY CALCULATION – SCENARIO 1: TWO-STAGE ROYALTY ON GROSS Ni, Cu, Co METAL AND Mn ORE VALUE			
BNFTC	Standard (Definitions)	**Listed Price** means: 1. For copper, nickel and cobalt: the price (in United States dollars), quoted for the Relevant Metal in the Official Listing relating to that Relevant Metal for the relevant period. ~~2.~~ For manganese: ~~the result of the following calculation:~~ ~~0.1 x EMM Price) + (0.4 x LC FeMn Price) + (0.4 x MC FeMn Price) + (0.1 x HC FeMn Price) where:~~ ~~(a) EMM Price means the price (in United States dollars), quoted for electrolytic manganese metal in the applicable Official Listing for the relevant period;~~ ~~(b) LC FeMn Price means the price (in United States dollars), quoted for low-carbon ferromanganese in the applicable Official Listing for the relevant period;~~ ~~(c) MC FeMn Price means the price (in United States dollars), quoted for medium-carbon ferromanganese in the applicable Official Listing for the relevant period; and~~ ~~(d) HC FeMn Price means the price (in United States dollars), quoted for high-carbon ferromanganese in the applicable Official Listing for the relevant period~~ the price (in United States dollars) quoted for medium-grade Mn ore prices in the applicable Official Listing for the relevant period.	As noted in our Response, contractors continue to view the value of the nodules removed from the area as the appropriate basis for the ISA royalty calculation and believe this approach can be operationalized from day one of Commercial Production (see **Scenario 2** below). As an alternative, in view of: (i) the progress made by the OEWG; (ii) current uncertainties around the valuation of nodules; and (iii) difficulties estimating a nodule transfer price at this stage of the industry, we support the short-term use of medium grade manganese ore price as the valuation basis for manganese contained in nodules.
BNFTC	Guidelines (Worked Example)	**Relevant Ore Value for Manganese:** 1. For each Shipment of manganese: ~~Quantity x Average Grade of the Relevant Metal x Average Listed Price for the Relevant Metal~~ Quantity x Average Grade of the Relevant Metal x Average Listed Price for the Relevant Ore Adjusted for Manganese Contents 2. For the royalty return period: the aggregate of the Relevant Metal Values for each Shipment which commenced loading in the royalty return period 3. Therefore, assuming 3 Shipments: [Insert worked table]	

ISSUE 3: BASIS FOR ROYALTY CALCULATION – SCENARIO 2: TWO-STAGE ROYALTY ON NODULE ORE VALUE			
BNFTC	Appendix IV	In the present appendix: ~~**Aggregate Relevant Metal Value** means the aggregate of the Relevant Metal Values for each Relevant Metal calculated in accordance with the Standard.~~ **Nodule Ore Price** means the sales price, established in an arm's length transaction, for nodule ore in a Shipment calculated in accordance with the Standard. **Applicable Royalty Rate** means the royalty rate set out in the Standard, which may be by a decision of the Council following any review under these regulations. ~~**Average Listed Price** means the average listed price for a Relevant Metal, calculated in accordance with the Standard.~~ ~~**Average Grade** means the average metal content of the Relevant Metal calculated in accordance with the Standard.~~ ~~**Relevant Metal** means a metal contained in the mineral-bearing ore identified and determined accordance with the Standard.~~ ~~**Relevant Metal Value(s)** means the gross market value(s) of a Relevant Metal calculated in accordance with the Standard.~~ **Shipment** means each shipment of mineral-bearing ore by a vessel transporting the ore out of the Contract Area **Valuation Point** is the first port of call for a vessel transporting the ore out of the Contract Area. **1. The Authority shall set a royalty rate** The Authority shall set an Applicable Royalty Rate in respect of the royalty to be paid by the Contractor to the Authority for ~~Minerals which constitute polymetallic nodules~~ Nodule Ore, as set out in the Standard and taking into account the Guidelines. **2. Calculation of royalty payable** The royalty payable to the Authority for each royalty return period shall be the product of the Applicable Royalty Rate multiplied by the ~~Aggregate Relevant Metal Value~~ Nodule Ore Price for that royalty return period, calculated in accordance with the Standard and taking into account the Guidelines.	

BNFTC	Standard	In the present Standard: **First Period of Commercial Production** means a period of 5 years following the date of commencement of Commercial Production. **Listed Price** means: 1. For copper, nickel and cobalt: the price (in United States dollars), quoted for the Relevant Metal in the Official Listing relating to that Relevant Metal for the relevant period. 2. For manganese: the result of the following calculation: (0.1 x EMM Price) + (0.4 x LC FeMn Price) + (0.4 x MC FeMn Price) + (0.1 x HC FeMn Price) where: (a) EMM Price means the price (in United States dollars), quoted for electrolytic manganese metal in the applicable Official Listing for the relevant period; (b) LC FeMn Price means the price (in United States dollars), quoted for low-carbon ferromanganese in the applicable Official Listing for the relevant period; (c) MC FeMn Price means the price (in United States dollars), quoted for medium-carbon ferromanganese in the applicable Official Listing for the relevant period; and (d) HC FeMn Price means the price (in United States dollars), quoted for high-carbon ferromanganese in the applicable Official Listing for the relevant period. **Official Listing** means the quoted or published price of the Relevant Metals as specified for each Relevant Metal in the Guidelines. **Second Period of Commercial Production** means the period commencing on the day following the last day of the First Period of Commercial Production. **Shipment** means each shipment of mineral-bearing ore by a vessel transporting the ore out of the Contract Area. **1. Relevant Metals** For the purpose of polymetallic nodules and appendix IV, Relevant Metals will be copper, nickel, cobalt and manganese. **2. Calculation of Average Grade** (1) In respect of each Relevant Metal, the Average Grade shall be the metal content of that Relevant Metal expressed as a percentage per dry metric ton of mineral-bearing ore in a Shipment. (2) The metal content of each Relevant Metal shall be determined based on samples of the mineral- bearing ore collected at the Valuation Point in accordance with the sampling and assaying procedures set out in the Guidelines.	

3. Calculation of the Nodule Ore Price

The Nodule Ore Price shall be the sales price, in an arm's length transaction, received for each nodule ore shipment as contained in a nodule ore sales contract.

~~**4. Calculation of Average Listed Price**~~

~~The Average Listed Price for a Relevant Metal shall be the Listed Price for the Relevant Metal for the month during which loading of that Shipment commenced.~~

~~**5. Calculation of Relevant Metal Value and Aggregate Relevant Metal Value**~~

~~(3) The value of the mineral-bearing ore for a royalty return period shall be the Aggregate Relevant Metal Value for that period.~~

~~(4) The Aggregate Relevant Metal Value for a royalty return period shall be the aggregate of the Relevant Metal Values for each of the Relevant Metals for that period.~~

~~(5) The Relevant Metal Value for each Relevant Metal during the royalty return period shall be calculated as follows:~~

~~(a) For each Shipment:~~

~~Quantity x Average Grade of the Relevant Metal x Average Listed Price for the Relevant Metal~~

~~(b) For the royalty return period:~~

~~the aggregate of the Relevant Metal Values for each Shipment [which commenced loading] in the royalty return period~~

~~Where:~~

~~(i) Quantity means the quantity (in dry metric tons) of the mineral-bearing ore in each Shipment [which commenced loading] in a royalty return period and calculated in the light of the applicable Guidelines.~~

~~(ii) Average Grade is calculated in accordance with this Standard and in the light of the applicable Guidelines.~~

~~(iii) Average Listed Price is calculated in accordance with this Standard and in the light of the applicable Guidelines.~~

6. Determination of the Applicable Royalty Rate

The Applicable Royalty Rate shall be:

Progressive two-stage ad valorem

(1) For the First Period of Commercial Production, [x]%; and

(2) For the Second Period of Commercial Production, a rate no less than [x%] and no greater than [x%] determined by reference to the table below and the Nodule Ore Price:

Nodule Ore Price	Applicable Royalty Rate for Second Period of Commercial Production
Less than US$ [x] per dry metric tonne	[x%]
Greater than or equal to US$ [x] per dry metric tonne but less than US$ [x] per dry metric tonne	[x%]
Greater than US$ [x] per dry metric tonne	[x%]

7. Documents to be provided to the Authority

For each royalty return period, a Contractor shall submit nodule ore sales contracts to the Authority to verify transactions took place at an arm's length and that the contract sales price represents fair market value.

8. Authority's Right to Audit

The Authority may decide to commission a third-party expert, at a Contractor's expense, to verify that nodules ore sales contracts submitted to the Authority represent fair market value.

ISSUE 4: FISCAL STABILITY			
BNFTC	81	**Review of system of payments** 1. The system of payments adopted under these regulations and pursuant to paragraph 1 (c) of section 8 of the annex to the Agreement shall be reviewed by the Council before five years lapse from the first date of commencement of Commercial Production in the Area and at intervals thereafter as determined by the Council, taking into account the level of maturity and development of Exploitation activities in the Area. 2. The Council, based on the recommendations of the Commission, and in consultation with Contractors, may revise the system of payments in the light of changing circumstances and following any review under paragraph 1 above, save that any revision shall only apply to existing exploitation contracts by agreement between the Authority and the Contractor.	Contractors believe that reviews of the system and rates of payments, in consultation with contractors, should be conducted at five-year intervals. This will ensure continued flexibility in the system and rates.
BNFTC	82	**Review of rates of payments** ~~1.~~ The rates of payments under an existing system of payments shall be reviewed by ~~the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter as determined by the Council, taking into account the Resource category and the level of maturity and development of Exploitation activities in the Area.~~ the Economic Planning Commission before five years lapse from the first date of commencement of Commercial Production in the Area and at five-year intervals thereafter. 2. The Council, based on the recommendations of the Commission and in consultation with Contractors, may adjust the rates of payments in the light of such recommendations and consultation, save that any adjustment to the rates of payments may only apply to existing exploitation contracts ~~from the end of the Second Period of Commercial Production reflected in appendix IV to these regulations~~ by agreement between the Authority and the Contractor. 3. Without limiting the scope of any review by the Council, a review under this regulation may include an adjustment to the Applicable Royalty Rate under appendix IV and the manner and basis of the calculation of a royalty.	