

Seventh Meeting of the Open-ended Working Group of the Council on the financial terms of a contract under article 13, paragraph 1 of Annex III to the United Nations Convention on the Law of the Sea and under section 8 of the Annex to the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982

16-17 March 2023, Kingston

Briefing Note

Prepared by the Chair of the Open-ended Working Group of the Council (OEWG)

I. Introduction

1. The purpose of this briefing note is to assist the participants in the upcoming meeting of the Open-ended Working Group of the Council (OEWG) with a view to advancing the work on the system of payment and rates for polymetallic nodules as a priority.

2. The OEWG agreed at its meeting in November 2022 that I would prepare an update to the draft text presented in July 2022 before the upcoming meeting in March 2023. It was also agreed that a more simplified valuation of manganese would be reflected in the next revised text, with further calculations by Massachusetts Institute of Technology (MIT) for the next meeting in March 2023. I had also suggested that the revised draft text would attempt to reflect suggestions of the African Group while addressing concerns related to possible overtaxation, forum shopping and similar issues.

3. Furthermore, it was agreed that written suggestions to the draft could be submitted by 15 January 2023.

4. In light of the submitted suggestions and to facilitate discussions of the OEWG, an updated draft text ('the Chair's revised text') has been prepared (ISBA/28/C/OEWG/CRP.2).

(a) That Chair's revised text includes some of the suggestions proposed, those which I believe are most likely to have consensus and require limited further discussion or drafting.

(b) Other suggestions have not been included at this stage since they lie on conceptual approaches which deserve further discussion in the OEWG. These include suggestions regarding:

- i. an additional royalty in lieu of sponsoring State income tax or effective tax rate (ETR) normalization levy;
- ii. taxation of the direct and indirect transfer of rights or a levy or imposition on transfer of rights or a levy or imposition on transfer of rights given the jurisdiction of the Authority; and
- iii. a "nodule ore" valuation after the first five years.

Without any broader agreement within the OEWG on these concepts, I believe that

a discussion on drafting would be premature and not the most efficient way of making progress during the March meetings. As regards proposals which interpret the role and mandate of the Finance Committee, I invite the proponents to further reflect on the strictly defined mandate of the Finance Committee under the 1994 Agreement.

(c) The revised text is premised on option 4, a two-stage variable ad valorem royalty, while recognizing that not all participants have expressed their support for this option and that other options are still on the table.

II. Structure of the meeting

5. For the meeting in March 2023, I suggest that following a presentation by the MIT on revised assumptions in accordance with previous discussions in the OEWG and the effects of these changes, the OEWG will focus its discussions on the revised draft text contained in ISBA/28/C/OEWG/CRP.2, going through the draft paragraph by paragraph. Subsequently, the OEWG may wish to address issues and suggestions not included in the revised draft text, such as those referred to in paragraph 4(b) above. Further presentations may be provided by MIT in respect of the issue referred to in paragraph 4(b) (i) and the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) in respect of 4(b)(ii).

III. Chair's revised text

6. In light of the above, the Chair's revised text constitutes only a draft that can be adjusted as discussions progress, including the possibility to incorporate further additions. At this stage, I consider it important to continue the discussions on the basis of the revised text, focusing on changes to reflect the suggestions received from the participants, with the hope that this will assist the OEWG in advancing its discussions on granular issues in relation to actual text concerning the draft regulations.

7. Proposed amendments have been provided to some regulations found in Parts I and III and Part IX of the draft regulations and these are included as they are integral to the royalty regime. Even though the provisions in Parts I and III are first in numbering, they have been placed at the end of enclosure I on Part VII as they are only secondary to the overall understanding of the royalty mechanism in Part VII.

8. The proposed amendments to the current Appendix IV are suggested with the aim to implement a royalty calculation mechanism for a two-stage variable ad valorem approach.

9. The suggested draft Standard is proposed to detail the royalty mechanism in the amended Appendix IV to implement a royalty calculation mechanism for a two-stage variable ad valorem approach.

10. 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.

Oslo, Norway, 27 February 2023.