



Response to the International Seabed Authority's Revised Draft Regulations on Exploitation of Mineral Resources in the Area (ISBA/24/LTC/WP.1/Rev.1)

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Submitted to:

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Response to the International Seabed Authority on the revised draft regulations contained in “ISBA/24/LTC/WP.1/Rev.1: Draft Regulations on Exploitation of Mineral Resources in the Area” made publicly available on 9 July 2018.

Ocean Mineral Singapore Pte Ltd. (OMS), a Singapore sponsored Contractor with exclusive rights for the prospecting and exploration of Polymetallic Nodules in the Clarion-Clipperton Zone (CCZ) commends the International Seabed Authority on its latest development of the exploitation regulations. OMS is pleased to note that the latest version of the Draft Regulations represents a progressive step towards providing coherence and clarity to all stakeholders whilst paving a pathway towards responsible exploitation of resources in the Area for the benefit of humankind as a whole.

OMS commends the Authority on its effort to take into account, and as best possible, incorporate the responses received from the various stakeholders resulting from the last consultative process. OMS believes the latest set of draft regulations represents a critical milestone in the right direction towards the realisation of this nascent industry. OMS appreciates that the effective management of resources in the Area relies greatly on the strength of the Exploitation Code and views that the exploitation regulations represent a key pivot towards bridging the gap from exploration to exploitation whilst ensuring both a commercially viable and environmentally sound regime is in place.

OMS takes note that the current exploitation regulation in its present form still represents a working paper as the Authority continues to develop in parallel standards and guidelines whilst simultaneously exploring an appropriate payment mechanism. As such, our comments at this juncture intend to address overarching principles necessary to ensure the development of the deepsea mining industry as a whole. OMS will thus refrain from a regulation-by-regulation analysis or redrafting of regulatory language unless deemed necessary to ensure consistency and clarity.

OMS appreciates the efforts of the Secretariat thus far on the draft regulations, and welcomes the overall approach to the draft regulations which now provides for an improved structure and more logical flow in the regulatory text. Notwithstanding that, OMS believes that the overarching objectives should be for the regulatory framework to provide for a stable, transparent and predictable regulatory environment which could afford Contractors and investors the visibility for long-term decisions with confidence and certainty. As such, OMS encourages the Authority to consider the importance of an overarching objective for the exploitation code to provide a greater degree of regulatory certainty and stability as well as for greater economic clarity and predictability.

1. Regulatory Certainty & Stability

OMS urges the Authority to place much needed consideration and emphasis on the urgency to provide for a stable, transparent and predictable regulatory regime as early as possible. OMS views this as necessary, not only towards the development of responsible deep-sea mining practices, but also for the effective management of resources in the area.

- Adoption Timeline and Roadmap

OMS understands the key to a balanced exploitation regime lies heavily on the draft regulations, however, OMS would like to emphasise the urgency for a working mining code. In light of the revised Council meeting schedule and the progress made to date, we urge the ISA to review and, if necessary, re-define the likely timeline of the code development roadmap. OMS remains hopeful that the Authority will be able to meet its intended 2019 timeline. We would like to reiterate the criticality to provide visibility to all stakeholders, and where necessary, to redefine key milestone targets to ensure time bound progress is made.

- Roles and Responsibility

OMS notes and commends the efforts of the Secretariat to better define the roles and responsibilities of the organs within the Authority whilst aiming to strike a balance of authority. However, OMS encourages the Authority to simultaneously consider how it can ensure regulatory oversight and associated decision-making be unbiased and thus insulated from any potential conflict of interest that could create an artificial advantage and equally, undermine the transparency and predictability of the procedure.

- Predictability

Predictability in its general sense, refers to the ability to predict the potential changes in the industry/regulatory structure and its resulting impact on incumbents. As such, OMS views predictability as an equally important characteristic of a well-functioning regulatory regime, in particular, towards the securing of investment in the Area. Predictability should extend to ensure the predictable nature of contractual terms, conditions and obligations. Notwithstanding that, OMS equally notes the need for robust yet flexible regulations able to respond and react to changing environments as a result of improved knowledge and experience. OMS thus urges the Authority to consider the use of a public consultative process and guidance as an option, with any proposed amendments to be unilaterally applied to all contractors.

OMS heeds with caution on how the authority intends to streamline its work with regards towards the credibility and the weight of the comments and feedback provided by the public and its impact towards progressing this nascent industry. It is important for OMS and contractors alike to hold security that each claim made be considered with credibility and integrity.

2. Economic Viability

OMS commends and appreciates the work of the Commission in consultation with the Massachusetts's Institute of Technology (MIT) on the co-development of potential financial models and payment regimes, in particular in demonstrating its impact on the cashflow to the Authority. OMS would like to reiterate the importance of a simple, clear and transparent economically viable regime necessary for the attracting of investment and technology for the exploration and exploitation of the area, as prescribed in Annex III, article 13(1)(b) of the Convention. OMS acknowledges that the financial models for the payment system represents the cornerstone of the exploitation regulations and looks forward to further developments integrating other studies already produced by various other stakeholders. In consideration of an appropriate payment mechanism, moving beyond understanding the revenues to the

Authority, OMS underscores the need to understand the possible costs involved to establish the transparent and fair monitoring of any proposed financial regime.

- Stability and Predictability

OMS notes that the current draft places a fundamental principle in ensuring the “protection of developing countries from serious adverse effects on their economies” (DR2.2(d)). OMS welcomes the work of the Authority to further elaborate on how it intends to effectively achieve this principle, short of imposing production limits on contractors. OMS take precaution that any production limits that could be imposed by the Authority, beyond that resulting from prevailing market conditions, would go against commercially sound principles and invites the risks of economic uncertainty and predictability that is needed by Contractors and the investor community. A need for economic predictability and stability is especially instrumental in ensuring its anticipated returns by a contractor to its investors in its financing plans.

- Annual Fixed Fee

OMS welcomes further developments by the Commission in relation to the basis for the calculation of the annual fixed fee and how this can be credited against other payments due by a contractor under the system of payments adopted. OMS notes that the annual fixed fee as stipulated in DR83.2 shall be established by the Council for each calendar year. In alignment with the need for economic stability and predictability, OMS encourages the Authority to explore the setting of guided parameters for the determination of the annual rates to allow for the proper economic planning by a Contractor.

- Level playing field

OMS urges the Authority to further elaborate and clarify on how intends to assign and award “incentives” as stipulated in DR61. OMS cautions that considerable regard be given to ensure not only are Contractors not subsidised so as to be given an artificial competitive advantage with respect to land-based miners, but also to ensure a level playing field within deepsea mining Contractors. The Authority needs to ensure that any incentives provided shall be uniformly applied to all contractors and that the regulations do not favour one deepsea mining business model or contractor structure over another.

3. Other matters

OMS would like to emphasise the need to ensure consistent use of language and definitions throughout the regulations and its compatibility with the exploration regulations as well as other applicable international laws and regulations. This is critical to prevent confusion and misinterpretation and we thus encourage the authority to place priority on providing clear definitions on terms, such as, but not limited to, ‘commercial production’, ‘environmental performance guarantee’, and ‘serious harm’. Where applicable, the Authority should also elaborate on how it develops acceptable thresholds ensuring transparency and visibility.

OMS remains fully aware of the complexities encumbering the development of a fair and balanced exploitation code in accordance with the provisions set forth under UNCLOS and appreciates the expeditious efforts of the ISA towards the development of a workable

exploitation regime. We look forward to further contributing towards the development of a sustainable and transparent exploitation regime for the benefit of humankind as a whole.

OMS continues to offer its support for, and contributions to, upcoming technical seminars and workshops and would like to reiterate the importance and underpinning urgency in revising the roadmap as it would be useful to see how these other building blocks will fit into the timeline of progression from exploration into that of exploitation.

OMS has been transparent in the sharing of its views and comments thus far and welcomes the Authority to make these comments publicly available and to treat them as non-confidential. OMS looks forward to continuing to participate in the development of the ISA's exploitation regulatory regime. OMS would like to again extend its appreciation to the Authority for this opportunity to contribute its views and comments on the latest draft exploitation regulations.