SINGAPORE'S COMMENTS ON THE DRAFT REGULATIONS ON EXPLOITATION OF MINERAL RESOURCES IN THE AREA

1. Singapore would like to thank the Legal and Technical Commission (LTC) for the second working draft of the Exploitation Regulations of Mineral Resources in the Area ("Regulations"). Singapore commends the Authority for making the Regulations publicly available in the interest of transparency and for seeking comments from stakeholders. Broad-based consultations are necessary and important as it is vital that interests of different stakeholders are taken into account, such that the regulations reflect an appropriate balance of these interests while maintaining consistency with international law and ensuring a level-playing field for all applicants and contractors. This is a key step towards providing greater regulatory certainty for all stakeholders involved, which will help promote the development of the deep seabed mining industry.

2. Singapore is pleased to note that the Regulations are more streamlined and concise than previous drafts, and follow a logical structure and flow. Singapore is of the view that a single, consolidated set of regulations lends coherence to the regulatory framework, making clear what is expected of applicants, contractors, sponsoring states and the ISA. For greater clarity and flexibility to respond and adapt to new developments and information, it is prudent to place the technical and administrative details in the respective annexes and relevant guidance and standards.

3. As highlighted by the Secretariat in ISBA/23/C/12, Part VII of the Regulations on the financial terms of an exploitation contract remain very much a work in progress at this stage and subject to the validation of, and further discussion on, a financial model and payment scenarios. Singapore strongly encourages the Secretariat to engage stakeholders in a consistent and transparent manner on this important aspect of the Regulations, including but not limited to the separate consultation exercise planned for 2018.

4. As an active participant of the ISA's various stakeholder engagements, Singapore stands ready to contribute to ISA's efforts in preparing this regulatory framework. Our preliminary comments on the working draft of the Regulations are in Annex A.

Annex A: Specific Comments on the Regulations

Role of Sponsoring State

5. On the role of the sponsoring state, the primary consideration is that the obligations of the sponsoring state should be in line with the provisions of UNCLOS. We are of the view that it is not necessary to prescribe in detail what sponsoring states need to do, and that sponsoring states should be given flexibility on how to implement their obligations under UNCLOS. This is dependent on a variety of factors, including the relevant national legislation and the general legal framework operating in the sponsoring state. Nevertheless, there remains a need for further clarification of the division of responsibility between the Authority and sponsoring states, and potentially with other relevant states such as flag states. This will assist in greater co-ordination and minimise the situations in which matters are overlooked.

Contract Area

6. The key issue to be addressed is the responsibility and expectations on the contractor in relation to the contract area, particularly, in those parts of the contract area outside of the mining area, and the applicable rules. We note, for example, that the current definition of "exploitation" and "exploitation activities" includes "exploration". Our preliminary view is that in the event that the contractor undertakes exploration in the contract area, the exploration regulations should apply to such exploration. There should not be different rules on exploration between contractors who have an exploitation contract and those who have an exploration contract.

7. The definition and scope of a contract area and mining area should also be clearly set out in the regulations to prevent any ambiguity. For instance, one possible issue that might arise is whether a contractor can choose to change the mining area during the term of the exploitation contract, and if there is any process for notifying the Authority in such instance.

Confidential Information

8. While a list of non-confidential information could be helpful, it may be challenging to draw up an exhaustive list. In addition, information, which includes data, falling within any such list may, in certain situations, be confidential. A process should therefore be put in place to allow the designation of information that falls within any such list as confidential, depending on the circumstances. This could be on the basis of draft regulation 75(3).

Administrative Review Mechanism

9. Our preliminary view is to adhere to the dispute settlement mechanism that is in UNCLOS. Nevertheless, we are prepared to consider the possibility of having such a

mechanism if it will aid in the management of the exploitation regime. There needs to be better clarity on how such a mechanism is intended to work, in particular, how the mechanism is intended to interact with Part XI, Section 5, and the Seabed Disputes Chamber.

10. In terms of the kinds of disputes that such a mechanism could review, our preliminary view is that it should not overlap with the jurisdiction of the Seabed Disputes Chamber as the mechanism should not be set up as an alternative to the Seabed Disputes Chamber.

11. We note that under UNCLOS, in situations where commercial arbitration is utilised, the arbitration tribunal has no jurisdiction to decide any question of interpretation of UNCLOS (Article 188). Our view is that a similar restriction should be placed on the mechanism.

12. In addition, given that the mechanism could be looking at decisions made by the Authority against a Contractor, consideration should be given to whether it would be appropriate for the Secretary-General to be responsible for conducting investigations (draft regulation 92(3)).

13. We note that the new draft regulation 92 provides detail on the process of the review mechanism and that there is also provision, in the Regulations, for when other dispute resolution means other than draft regulation 92 can be used. We would like to query whether it is also appropriate to allow for parties to opt to resolve disputes relating to the confidentiality of information using other means, in accordance with Article 188, paragraph 2, in UNCLOS (as is provided for in draft regulation 71, for instance). This would avail parties of the option of other means of dispute settlement which may be appropriate for such disputes, including international commercial arbitration.

Interested Persons and Public Comment

14. We note that some of the current concepts in the definition of "interested person" may require clarification. It is not clear what is meant by "directly affected" in this context, or what constitutes "relevant information or expertise". Bearing in mind the principle of the common heritage of mankind, the pool of "interested persons" may be bigger than what is currently envisaged. It is therefore important to develop a process or guidelines to manage public consultation exercises, taking into account the context in and purpose(s) for which such exercises will be undertaken.

15. Whether sponsoring States should be involved will depend largely on the process for public consultation exercises. We note that draft regulations 20 and 22 already contemplate a role for the Authority in respect of public consultations.

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