

**Twenty-ninth session**  
Council session, part I  
Kingston,  
18 – 29 March 2024

## **Elements to be relocated from the draft regulations on exploitation of mineral resources in the Area to the Standard and Guidelines and other rules, regulations and procedures of the Authority**

### **Suspense document**

#### **Explanatory note**

1. This document is a collation of the material removed from the consolidated text (ISBA/29/C/CRP.1) based on the discussions during the third part of the twenty-eight session and the subsequently received proposals. To recall, during the negotiations of the draft regulations on exploitation of mineral resources in the Area, many delegations have asked for highly technical elements to be moved from the regulations to the relevant Standard and Guidelines and other rules, regulations and procedures. Therefore, the text below is placed in suspense, and not discarded. The content will inform in particular the forthcoming consideration of Standards and Guidelines.

2. The suspense document contains explanations and indication of where the elements originates from in the regulations and where the proposals are anticipated to later be placed. Furthermore, the reference to the original ISB text and date is inserted in order to trace the development of the text.

#### **Moved from:**

Regulation 2, paragraphs 3 and 6

The revised draft text of the Co-Facilitators of the Informal Working Group on Institutional Matters (ISBA/28/C/IWG/IM/CRP.2) - Moved in February 2024.

#### **To be placed:**

For the use of policy discussions and possible incorporation

#### **The text:**

3. Exploitation in the Area shall not commence until the legal framework intended for the effective protection and preservation of the Marine Environment is adopted and scientific evidence demonstrates that the Exploitation will be conducted in such a manner as not to cause significant and harmful changes to the Marine Environment and its resources and to effectively protect and preserve the Marine Environment pursuant to article 145 and [article 209 of] Part XII of UNCLOS.]

[3 Alt Exploitation shall not be authorized in the Area unless, inter alia, phase one and two Standards and Guidelines are adopted, and effective protection of the Marine Environment from harmful effects can be ensured consistent with Article 145 of the Convention [and including biological diversity and ecosystem integrity] [and effective protection of human life in accordance with Article 146 of the Convention].

[3 Alt 2. Exploitation in the Area shall not commence until:

(a) the legal framework intended for the effective protection and preservation of the Marine Environment has entered into force [and the Authority has adopted an environmental policy];

(b) the implementation of [Target 3 of] the Kunming-Montreal Global Biodiversity Framework is well on track in the area beyond national jurisdiction; and

(c) scientific evidence demonstrates that Exploitation will be conducted in such a manner so as: not to cause significant and harmful changes to the Marine Environment and its resources, [pursuant to article 196 of , and] to effectively protect and preserve the Marine Environment[, including biological diversity and ecosystem integrity] pursuant to Article 145 and Part XII of the Convention [including biological diversity and ecosystem integrity], and not to impede the full implementation of [Target 3 of] the Kunming-Montreal Global Biodiversity Framework in the area beyond national jurisdiction.

[6. Members of the Authority, Sponsoring States, Contractors, and the Authority shall use best endeavours in their actions to uphold public trust in and regulatory integrity [of the Authority], and shall not engage on decisions in which they have a conflict of interest.]

**Moved from:**

Regulation 17, para 7(d)

The revised draft text of the President (ISBA/28/C/WOW/CRP.2) – Moved in February 2024.

**To be placed:**

Material change to a work plan provision

**The text:**

(d) In order to progress from Exploration to Exploitation of a site within the Contract Area, where such Exploitation activity was not covered by the agreed Plan of Work, the Contractor must submit a new environmental impact statement and revised Plan of Work, in accordance with regulation 46.bis and which must be approved by the Authority in accordance with Regulations 12 to 16.

**Moved from:**

Regulation 26, paragraph 3bis

The revised draft text of the President (ISBA/28/C/WOW/CRP.2) – Moved in February 2024.

**To be placed:**

EPG Standard and Guidelines

**The text:**

3 bis. The Environmental Performance Bond shall take the form of a letter of credit or surety bond guaranteed by a financial institution with a long-term credit rating of AA or better from Fitch Ratings, Moody's or Standard & Poor and meeting the other financial criteria provided for in the Standard.

**Moved from:**

Regulation 29 Alt.

The revised draft text of the President (ISBA/28/C/WOW/CRP.2) – Moved in February 2024.

**To be placed:**

Relevant Guidelines

**The text:**

Reduction or suspension in production due to market conditions

1. In pursuance of Regulation 2(2)(a) relating to the efficient conduct of activities, and the avoidance of unnecessary waste, and to ensure that the resources are being mined optimally in accordance with the Mining Work Plan, a Contractor shall, in accordance with Best Industry Practices:

(a) Avoid inefficient mining practices;

(b) Minimize the generation of waste in the conduct of exploitation in the Area

2. A Contractor shall include in its annual report under Regulation 40 such information and Reports as the Secretary General requests, in accordance with the Standards and Guidelines, to demonstrate that the Contractor is meeting the obligations in paragraph 1 above.

3. If the Secretary General becomes aware that Contractor is not meeting the obligations in paragraph 1 above, by way of written notice to the Contractor, request a review of mining and processing activities carried out under the Plan of Work. The Contractor shall implement any modifications to bring the Mining Workplan and any mining and processing practice into conformity with Best Industry Practices.

4. Members of the Authority shall, to the best of their abilities, assist the Secretary General through the provision of Data and information in connection with this regulation where processing, treatment and refining of ore from seabed mining occur under their jurisdiction and/or control.

**Moved from:**

Regulation 47 Alt:

- One sentence in para 3 (a),
- Point (i)-(iii) of para 4 (b), and
- Point (i)-(v) of para 4 (f)

The fourth revised draft text of the Facilitator of the Informal Working Group on the Protection and Preservation of the Marine Environment (ISBA/28/C/IWG/ENV/CRP.3/Rev.1) – Moved in February 2024.

**To be placed:**

Relevant Standard

**The text:**

One sentence in para 3 (a):

The EIA shall be based on relevant environmental baseline data: *“that captures temporal, (seasonal and interannual) and spatial variation”*

Point (i)-(iii) of para 4 (b):

A stage for assessment of environmental impacts in accordance with Regulations 47bis, including:

*“(i) An update to the environmental risk assessment, as developed during scoping, describing the likely impacts on the marine environment and [objects of an archaeological historical nature] and predict the nature and extent of the [Environmental Impacts and] Environmental Effects [and risks] of the Exploitation including residual impacts, cumulative [effects], including existing and foreseen mining operations, other activities and natural phenomena.*

*(ii) An evaluation of harmful effects on the [marine] environment and ecosystem services, [based] on [a scientific-based approach, including] clear and transparent assessment criteria and a robust evidence base, [applying] Best Available Scientific Information and where applicable, relevant traditional knowledge of Indigenous Peoples and local communities];*

*(iii) The presentation and evaluation of potential mitigation measures, and subsequent statement of management and monitoring commitments ([ to inform preparation of the Environmental Management and Monitoring Plan), to [monitor] mitigate, [manage], avoid and minimize [harmful] effects [to the marine environment], and monitor residual impacts;]”*

Point (i)-(v) of para 4 (f)

(f) A proactive consultation by an applicant or Contractor with Stakeholders at all stages, in accordance with the applicable Standards and taking into account the applicable Guidelines, which includes:

*“(i) Providing Stakeholders with access to up-to-date and comprehensive [environmental data and] information [relating to] the proposed activities [their ] impacts,*

*(ii) Using best efforts to obtain Stakeholder comments on the draft scoping report and draft environmental impact statement for a reasonable period.*

*(iii) Provide a reasonable opportunity for Stakeholders to raise enquiries and to make known their views,*

*(iv) Make publicly available Stakeholder comments received during the consultation process, including on the applicant or Contractor’s own website, and*

*(v) Record and address, in the scoping report and Environmental Impact Statement respectively, any substantive and relevant Stakeholder comments received.]”*

**Moved from:**

DR 54, para 2, litras a-h

The fourth revised draft text of the Facilitator of the Informal Working Group on the Protection and Preservation of the Marine Environment (ISBA/28/C/IWG/ENV/CRP.3/Rev.1) – Moved in February 2024.

**To be placed:**

Relevant standard on the Environmental Compensation Fund

**The text:**

Those rules and procedures shall include, inter alia:

(a) A mechanism for financing the funds in accordance with Regulation 56, including replenishment upon disbursement;

- (b) A description of how the funds and any interest generated will be managed and by whom;
- (c) The process for accessing the funds;
- (d) The type of damages and purposes eligible for claims against the funds in accordance with regulation 55;
- (e) The standard of proof required for claims against the funds;
- (f) A policy on refunds of Contractor payments into the funds;
- (g) A process for determining disbursements or refunds from the funds; and
- (h) The promotion of the participation of affected persons or other Stakeholders in decisions about disbursement of funds.

**Moved from:**

Regulation 64 bis to Regulation 64 qui

The third revised draft text of the Chair of the Open Ended Working Group on the Financial Terms of a Contract (ISBA/28/C/OEWG/CRP.6) – Moved in February 2024

**To be placed:**

Relevant standard

**The text:**

Regulation 64 bis

Determination of the applicable equalization measure

1. If a Contractor's most recent Equalization Measure Audit confirms that:

(a) the Contractor does not have any Tax Exemptions from its Sponsoring State(s); and

(b) the Contractor does not receive any Subsidies from its Sponsoring State(s),

then the Contractor shall pay the Top-up Profit Share Payment to the Authority.

2. If a Contractor's most recent Equalization Measure Audit confirms that:

(a) the Contractor does have Tax Exemptions from its Sponsoring State(s); and/or

(b) the Contractor does receive Subsidies from its Sponsoring State(s),

then the Contractor shall pay the Additional Royalty to the Authority.

3. A Contractor shall ensure that an Equalization Measure Audit shall be carried out prior to the commencement of Commercial Production and periodically thereafter as determined by the Authority in accordance with the relevant Standard and applicable Guidelines. Promptly on its completion a Contractor shall forward a copy of the Equalization Measure Audit to the [Secretary-General] [Commission].

4. A Contractor will pay for each Equalization Measure Audit, which shall be undertaken by an Independent Auditor in accordance with the relevant Standard and applicable Guidelines.

5. A Contractor and Sponsoring State(s) shall fully assist an Independent Auditor undertaking an Equalization Measure Audit and shall provide the Independent Auditor with all relevant documentation, including but not limited to the Contractor's audited accounts, any sponsorship agreement or other arrangements between the Contractor or any of its Related Entities and the Sponsoring State(s) or any other government authority in any jurisdiction, any contract, and any other documents that evidence or provide the Contractor with an actual or potential Tax Exemption or Subsidy.

6. If a Contractor or any of its Related Entities, at any time after the initial Equalization Measure Audit has been completed, enters into, or otherwise agrees, or receives the benefit of, any arrangement that could be considered to provide the Contractor with an actual or potential Tax Exemption or Subsidy, the Contractor shall immediately notify the [Secretary-General][Commission]. The [Commission] may, in accordance with the relevant Standard and applicable Guidelines, determine that an Equalization Measure Audit must be carried out.

#### Regulation 64 ter Additional Royalty

1. The Additional Royalty payable under Regulation 64Bis is in addition to the royalty provided for in Regulation 64.

2. If required under regulation [64Bis], a Contractor, from the [commencement of the Second Period of Commercial Production] [fifth anniversary of the date of commencement of Commercial Production], shall pay an Additional Royalty in respect of mineral-bearing ore sold or removed without sale from the Contract Area as provided for in Appendix IV to these regulations.

3. The Authority shall set an Applicable Additional Royalty Rate in respect of the Additional Royalty to be paid by the Contractor to the Authority for the Minerals which constitute polymetallic nodules, as set out in the relevant Standard and applicable Guidelines.

4. The Applicable Additional Royalty Rate shall be [8%].

5. The Additional Royalty payable to the Authority for each [royalty return period] [Calendar Year] shall be equal to X minus Y, where:

(a) X is the product of the Applicable Additional Royalty Rate multiplied by the Aggregate Relevant Metal Value for that [royalty return period] [Calendar Year]; and

(b) Y is any amount of Allowable Sponsoring State Tax that has not been deducted in previous [royalty return periods][Calendar Years] when calculating an Additional Royalty payment or a Top-up Profit Share Payment, calculated in accordance with the Standard and taking into account the Guidelines. In no circumstances shall the Additional Royalty be less than zero.

6. A payment from a Contractor to the Sponsoring State(s) is an Allowable Sponsoring State Tax, where:

(a) the payment is an actual cash payment made by the Contractor to its Sponsoring State(s) in respect of taxes and/or royalties [related to activities associated with] [accruing from seabed mining under] the exploitation contract;

(b) there is a [signed letter] [receipt] from the Sponsoring State's tax authority stating the actual cash amount paid by the Contractor to the Sponsoring State for taxes and/or royalties [related to activities associated with] [accruing from seabed mining under] the exploitation contract; and

(c) where there is a signed letter from an Independent Auditor confirming the actual cash amount paid by the Contractor to the Sponsoring State for taxes and/or royalties [related to activities associated with] [accruing from seabed mining under] the exploitation contract.

(d) The Contractor shall pay for the audit referred to in regulation [64Ter.6(c)].

(e) [Draft Regulations 27, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 89 shall apply to the Additional Royalty as they apply to the royalty.

(f) Appendix IV definitions apply to the Additional Royalty as they apply to the royalty.

(g) Draft Standard sections 1 to 4 apply to the Additional Royalty as they apply to the royalty.]

#### Regulation 64Qua

#### Top-up Profit Share Payment

1. If required under regulation [64Bis], a Contractor, from the [commencement of the Second Period of Commercial Production] [fifth anniversary of the date of commencement of Commercial Production], shall pay a Top-up Profit Share Payment [ as provided for in Appendix IV to these regulations].
2. The Authority shall set an Assumed CIT Rate in respect of Top-up Profit Share Payment to be paid by the Contractor to the Authority, as set out in the relevant Standard and applicable Guidelines.
3. The Assumed CIT Rate shall be [25%].
4. The Top-up Profit Share Payment payable to the Authority for each [royalty return period] [Calendar Year] shall be equal to A minus B, where:
  - (a) A is the Assumed CIT Rate multiplied by Profits for that [royalty return period] [Calendar Year]; and
  - (b) B is Total Eligible Payments for that year, calculated in accordance with the Standard and taking into account the Guidelines. In no circumstances shall the Top-up Profit Share Payment be less than zero.
5. Profits for the [royalty return period] [Calendar Year] are equal to C plus D plus E (without double counting) where:
  - (a) C is the sum of the Income for that [royalty return period] [Calendar Year] from Relevant Activities from all Related Entities that have not met the Inclusion Criteria;
  - (b) D is the sum of the Income for that [royalty return period] [Calendar Year] from all activities from all Related Entities that have met the Inclusion Criteria; and
  - (c) E is the Income of the Contractor for that [royalty return period] [Calendar Year].
6. Total Eligible Payments for a [royalty return period] [Calendar Year] are equal to Eligible Royalty Payments to the Sponsoring State(s) for that [royalty return period] [Calendar Year] plus Eligible Tax Payments for that [royalty return period] [Calendar Year].
7. Eligible Royalty Payments are royalties payable to the Sponsoring State(s) by the Contractor [related to activities associated with] [accruing from seabed mining under] the exploitation contract.
8. Eligible Tax Payments are equal to F plus G, where:
  - (a) F is the sum of Covered Taxes [incurred][paid] by all Related Entities to the Sponsoring State(s) or any other government authority in any jurisdiction arising due to Income that has been included in the calculation of Profits provided for by regulation 64Qua.5 for that [royalty return period] [Calendar Year]. Any payment made to any Sponsoring State(s) or any other government authority due to Income not included in the definition of Profits in Draft Regulation 64Qua.2 is not an Eligible Tax Payment; and
  - (b) G is Covered Taxes [incurred][paid] by the Contractor to the Sponsoring State(s) [or any other government authority in any jurisdiction] for that [royalty return period] [Calendar Year].
9. A Contractor shall lodge with the Secretary-General a Top-up Profit Share Return not later than 90 Days after the end of each [royalty return period] [Calendar Year]
10. A Top-up Profit Share Return shall include the following information for each [royalty return period] [Calendar Year], in accordance with the Standard and taking into account the Guidelines:
  - (a) the Top-up Profit Share Payment due, Profits, Income, Income included in Profits, Total Eligible Payments, Eligible Royalty Payments, and Eligible Tax Payments for that [royalty return period] [Calendar Year];
  - (b) for each Related Entity, whether it meets the Inclusion Criteria;
  - (c) for each Related Entity that meets the Inclusion Criteria, its Income, Total Eligible Payments, and Eligible Tax Payments;
  - (d) for each Related Entity that does not meet the Inclusion Criteria, its Income from relevant Activities, Total Eligible Payments, and Eligible Tax Payments;
  - (e) audited accounts for the Contractor and its Related Entities;

(f) for each Related Entity that does not meet the Inclusion Criteria, audited segmented accounts for each of those Related Entities showing the Income, Eligible Tax Payments and Covered Tax payments from Relevant Activities and separately from non-Relevant Activities; and

(g) any other information, document or anything required under the Standards, Guidelines or reasonably requested by the Authority for the administration and validation of the Top Up Profit Share Payment.

11. A Profit Share Audit shall be carried out by an Independent Auditor [employed by and reporting to the Authority and] in accordance with the relevant Standard and applicable Guidelines.

12. A Contractor will pay for each Profit Share Audit.

#### Regulation 64Qui

##### Applicable Standards for financial payments

1. The Authority shall adopt Standards [and Guidelines] providing for the effective operation of the Additional Royalty and Top-up Profit Share Payment, including but not limited to:

(a) definitions of Inclusion Criteria, Subsidies, Relevant Activities, and Tax Exemptions;

(b) applicable rates for the Assumed CIT Rate and Applicable Additional Royalty Rate;

(c) definitions of Related Entities, Income and Covered Taxes that will be based to the greatest extent practical on the Pillar 2 Global Anti-Base Erosion Model Rules, or alternatively, may directly reference the relevant articles of the Pillar 2 Global Anti-Base Erosion Model Rules (as amended or updated from time to time);

(d) the criteria an auditor must meet to be an Independent Auditor;

(e) the criteria for the Equalization Measure Audit and Profit Share Independent Audit;

(f) the fees for the Equalization Measure Audit and Profit Share Audit;

(g) the format and required content of the Top-up Profit Share Return;

(h) the penalties, fees, and interest that the Authority shall levy on a Contractor due to non-cooperation with an Independent Auditor, late submission of a Top-up Profit Share Return, failure to submit a Top-up Profit Share Return, submission of an incomplete Top-up Profit Share Return, late payment of the Top-up Profit Share Payment and non-payment of a Top-up Profit Share Payment; and any other provisions as required.

#### **Moved from:**

Regulation 96 bis.

The third revised draft text of the Facilitator of the Informal Working Group on Inspection, Compliance and Enforcement (ISBA/28/C/IWG/ICE/CRP.2) – Moved in October 2023.

#### **To be placed:**

In the Rules of Procedure (ROP)

#### **The text:**

Decisions of the Compliance Committee shall be taken by consensus. If all efforts to achieve consensus has been exhausted, or time is of the essence, decisions may be taken by a majority of members present and voting. In the case of a tie, the Chair of the Compliance Committee shall have the decisive vote.

The Compliance Committee shall meet at regular intervals using virtual means, and in urgent cases involving possible instances of non-compliance, shall convene on short notice. Members of the Compliance Committee shall rotate among themselves on a monthly basis in order to ensure that one



member is always available “on call” in cases of non-compliance that require urgent action. In addition, the Compliance Committee shall appoint its own chair and vice chair. Unless otherwise determined by the Compliance Committee, the Chair of the Commission, the Chief Inspector and a member of the Secretariat designated by the Secretary-General shall be invited to attend the meetings of the Compliance Committee but without the right to vote. The Secretary-General shall facilitate the meetings of the Compliance Committee.

**Moved from:**

DR 97, para 2

The third revised draft text of the Facilitator of the Informal Working Group on Inspection, Compliance and Enforcement (ISBA/28/C/IWG/ICE/CRP.2) – Moved in October 2023.

**To be placed:**

Inspector Code of Conduct

**The text:**

Actions of the Inspectors are specifically guided by the rules and obligations contained within the Code of Conduct. Below to be inserted as examples/principles the inspectors shall be guided by.

The inspectors shall be guided by transparency, accountability, probity, professionalism and non-discrimination.

**Moved from:**

DR 101 bis

The fourth revised draft text of the Facilitator of the Informal Working Group on Inspection, Compliance and Enforcement (ISBA/28/C/IWG/ICE/CRP.3) – Moved in February 2024.

**To be placed:**

General whistleblowing policy of the Authority

**The text:**

Whistle-blowing procedures

1. The [Compliance Committee] [Assembly, in collaboration with the Council] shall develop and implement:

(a) whistle-blowing policy for the staff of the Authority, the Inspectorate, the Enterprise, and personnel of Contractors, and

(b) a public complaints procedure to facilitate reporting to the Authority by any person of any concerns about the activities of a Contractor, or the Authority.

(2) The whistle-blowing and complaints procedures under this Regulation must:

(a) be publicly advertised,

(b) be easy to access and navigate,

- (c) enable anonymous reporting,
  - (d) trigger investigations of reports by independent persons, and
  - (e) be proactively communicated by the Secretary-General to Contractors and their staff, and other Stakeholders.
3. A Contractor, [its subcontractors and their agents] shall have in operation whistle-blowing and complaints procedures relating its activities as well as those of its subcontractors and agents, which must be publicly advertised, and which should include details of the Authority's equivalent procedures to enable direct reporting to the Authority by a complainant where preferable.

**Moved from:**

Annex IV of the Regulations

The fourth revised draft text of the Facilitator of the Informal Working Group on the Protection and Preservation of the Marine Environment (ISBA/28/C/IWG/ENV/CRP.3/Rev.1) – Moved in February 2024.

**To be placed:**

Relevant Standard and Guideline

According to the informal drafting group on restructuring the Environmental Impact Assessment Process, a majority of Annex IV should be moved to either Standard or Guidelines. This is laid out in [Annex IV](#) of the informal working groups report.

**Moved from:**

Annex VI, A, paras 2 and 3

The revised draft text of the President (ISBA/28/C/WOW/CRP.2) – Moved in February 2024.

**To be placed:**

Standard and Guidelines on Health and Safety Plan

**The text:**

2. The Health and Safety Plan must contain, as a minimum:
- (a) Requirements regarding minimum age and medical fitness for all personnel working and living on a vessel or installation;
  - (b) Requirements for the competency and training, including mandatory safety training, for all personnel working and living on a vessel or installation;
  - (c) A description of the measures taken to ensure that the vessel or installation is appropriately and sufficiently staffed in order to ensure that the vessel or installation is operated safely, efficiently and with due regard to security under all conditions;
  - (d) Information about the number and positions of all personnel working or living and working on a vessel or installation;
  - (e) Details of shore-based management providing assistance to the vessel or installation, including the designated person with responsibility and authority for monitoring the safety, health and security of operations and with direct access to the highest level of management;

- (f) Definitions of levels of authority and effective lines of communication between and among shore staff and personnel on board vessels and installations;
- (g) A description of the duties of the master and/or the person designated by the master to take responsibility for the implementation of and compliance with the occupational safety and health plan;
- (h) A description of an effective fatigue management strategy determining operational workload requirements matching onboard manning levels and onshore support resources as well as work schedules indicating the maximum hours of work or minimum hours of rest for all personnel living and working on a vessel or installation;
- (i) Information about the medical care available on the vessel or installation and the communication and response plans in the event that additional or onshore medical care is required;
- (j) Arrangements and procedures for the safe transfer of personnel to and from or between vessels or installations;
- (k) A description of foreseeable occupational hazards, an assessment of their likelihood and consequences, and associated preventative and control measures;
- (l) Details regarding procedures for hazard identification and risk assessment on vessels or installations and the preventive and protective measures adopted based on the outcomes of those procedures;
- (m) Details of procedures, plans and instructions for key operations concerning the safety of the personnel, vessels and installations;
- (n) A description of the equipment and tools to be provided to ensure that all operations are conducted in such a manner as to minimize any adverse effects on the occupational safety and health of personnel to the extent necessary;
- (o) Identification of critical equipment and technical systems that may result in hazardous situations;
- (p) A description of crew accommodations and recreational facilities enabling and promoting the personnel's health and well-being, and information on their conformity to relevant rules, regulations and standards;
- (q) Details of procedures to ensure that the vessels or installations are maintained in conformity with the provisions of the relevant rules and regulations and with any additional requirements that may be established;
- (r) Details of audit and review processes, and information on procedures for the implementation of corrective action, including measures intended to prevent recurrence;
- (s) Information on procedures ensuring that non-conformities, accidents and hazardous situations are reported, investigated and analysed with the objective of improving safety and prevention;
- (t) Details of the procedures for the communication of information between the company/owner/operator and competent authorities and organizations, including the Authority;
- (u) Details of the warning mechanisms intended to alert the Authority, together with the type of information to be contained in the warning;
- (v) Details regarding consultations with personnel on vessels or installations and, where appropriate, the representative workers' organizations, on the preparation and implementation of the vessel's or installation's occupational safety and health policies and programmes and the procedures to ensure the continuous improvement of the policies to take into account changes in practice and technology;
- (w) The occupational safety and health policy and programme for each vessel or installation engaged in activities in the Area; and
- (x) Procedures for the periodic review of the plan and for its updating.

3. An occupational safety and health policy and programme for a vessel or installation engaged in activities in the Area must contain the following to ensure a safety culture on board the vessel or installation:

- (a) An occupational health, safety and environmental awareness plan to inform all personnel engaged in activities in the Area as to the occupational and environmental risks that may result from their work and the manner in which such risks are to be dealt with;
- (b) A plan for the communication of the occupational health, safety and environmental awareness plan;
- (c) A training plan to establish a safety culture for occupational safety and health for the vessel or installation, including mandatory personal safety training and specific task and equipment training, including the labelling of safety-related equipment;
- (d) The roles and responsibilities of:
  - (i) Masters, officers or other personnel responsible for safety and health, including occupational safety and health on a vessel or installation;
  - (ii) The vessel or installation safety committee;
  - (iii) The worker representative on the safety committee.
- (e) Requirements, policies and training on the vessel or installation to address the following:
  - (i) Food and water safety;
  - (ii) Hygiene and sanitary facilities;
  - (iii) Measures to prevent disease and vermin;
  - (iv) Safety, and structural and design features of the vessel or installation, including means of access and asbestos-related risks;
  - (v) Provision of personal protective equipment for personnel;
  - (vi) Machinery;
  - (vii) Ambient factors in the workplace and living accommodation on the vessel or installation, including exposure to noise, vibration, lighting, ultraviolet light, non-ionizing radiation and extreme temperatures;
  - (viii) Air quality, ventilation and the effects of other ambient factors, including tobacco smoke;
  - (ix) Structural features of the vessels or installations and means of access, and materials;
  - (x) Special safety measures on and below deck on vessels and installations;
  - (xi) Loading and unloading of equipment;
  - (xii) Fire prevention and fire-fighting;
  - (xiii) Anchors, chains and lines;
  - (xiv) Dangerous cargo and ballast;
  - (xv) Work in enclosed spaces;
  - (xvi) Exposure to biological hazards;
  - (xvii) Exposure to radiological hazards;
  - (xviii) Exposure to chemicals;
  - (xix) Ergonomic hazards;
  - (xx) Physical and mental effects of fatigue;
  - (xxi) Effects of drug and alcohol dependency;
  - (xxii) Communicable diseases;
  - (xxiv) Emergency and accident response;
  - (xxv) Harassment and bullying;
  - (xxvi) Safety and occupational safety and health training of younger workers and trainees on the vessel or installation;

- (xxvii) Protection for lone and isolated workers;
- (xxviii) Protection of women workers and workers from vulnerable groups;
- (xxix) Measures regarding the safety, and occupational safety and health, of any temporary workers.

4. The occupational safety and health policy and programme must also address:

- (b) Procedures for the investigation, reporting and follow-up to any safety or occupational safety and health incidents, including occupational diseases;
- (c) Protection of the privacy of personal and medical data of personnel.

**Moved from:**

Annex VI, B, para 2

The revised draft text of the President (ISBA/28/C/WOW/CRP.2) – Moved in February 2024.

**To be placed:**

Relevant standard and guidelines on Maritime Security Plan

**The text:**

2. The Maritime Security Plan must contain, as a minimum:

- (a) Measures designed to prevent weapons, dangerous substances and devices that are intended for use against persons, vessels, installations or ports, and whose carriage is not authorized, from being taken on board the vessel or installation;
- (b) An identification of the restricted areas, and measures for the prevention of unauthorized access to them;
- (c) Measures for the prevention of unauthorized access to the vessel or installation;
- (d) Procedures for responding to security threats or breaches of security, including provisions for maintaining critical operations of the vessel or installation, or vessel/port interface;
- (e) Basic security measures for security level 1 (the level for which minimum appropriate protective security measures shall be maintained at all times), both operational and physical, that will always be in place;
- (f) Additional security measures that will allow the vessel or installation to progress without delay to security level 2 (the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a security incident) and, when necessary, to security level 3 (the level for which further specific protective security measures shall be maintained for a limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target);
- (g) Procedures for evacuation in case of security threats or breaches of security;
- (h) Duties of personnel on board vessels and installations who are assigned security responsibilities, and duties of other shipboard personnel relating to security aspects;
- (i) Procedures for auditing the security activities;
- (j) Procedures for training, drills and exercises associated with the plan;
- (k) Procedures for interfacing with port facility security activities;
- (l) Procedures for the periodic review of the plan and for its updating;
- (m) Procedures for reporting security incidents;

- (n) Identification of the vessel or installation security officer;
  - (o) Identification of the company security officer, including 24-hour contact details;
  - (p) Procedures to ensure the inspection, testing, calibration, and maintenance of any security equipment provided on board;
  - (q) Frequency of testing or calibration of any security equipment provided on board;
  - (r) Identification of the locations where the activation points of the vessel or installation security alert system are provided (when activated, a ship security alert system automatically transmits a ship-to-shore security alert to a competent authority,
  - (s) Procedures, instructions and guidance regarding the use of the vessel or installation security alert system, including testing, activation, deactivation and resetting, and regarding the limitation of false alerts.
  - (t) Cyber risks.
3. The Maritime Security Plan must establish that:
- (a) All personnel on board vessels and installations have received security-related familiarization and security-awareness training or instruction;
  - (b) Personnel on board vessels and installations with designated security duties have attended a training course on those duties.

**Moved from:**

[Reporting](#) from the intersessional working group on stakeholder consultation

**To be placed:**

Suggestions on content for the standard and guidelines on stakeholder consultation

**The text:**

**Guidelines** *will need to explain that such engagement should include meetings, workshops, webinars and other forms of engagement necessary, and guidance on how to undertake such engagement.*

**Moved from:**

Appendix II: Schedule of annual, administrative and other applicable fees

The revised draft text of the Co-Facilitators of the Informal Working Group on Institutional Matters (ISBA/28/C/IWG/IM/CRP.2) - Moved in February 2024.

**To be placed:**

Council decision on fees

**The text:**

Prescribed amount (United States dollars)

**Annual fees**

Submission of annual report (Regulation 84)

[ ]

**Application and other fees**

Application for the approval of a Plan of Work (Regulation 7(3)(j))	[ ]
Renewal of an Exploitation Contract (Regulation 20)	[ ]
Transfer of an interest in an Exploitation Contract and approved Plan of Work (Regulation 23)	[ ]
Use of a contract or approved Plan of Work as security (Regulation 22)	[ ]
Temporary suspension in Commercial Production (Regulation 29)	[ ]
Modification to a Plan of Work (Regulation 57)	[ ]
Approval of a revised/Final Closure Plan (Regulations 59(2) and 60)	[ ]
Approval of a revised Environmental Management and Monitoring Plan (Regulation 52(8)(b))	[ ]
[Other]	

**Moved from:**

Appendix III: Monetary Penalties

The revised draft text of the Co-Facilitators of the Informal Working Group on Institutional Matters (ISBA/28/C/IWG/IM/CRP.2) - Moved in February 2024.

**To be placed:**

Council decision on penalties

**The text:**

Penalty in respect of any under declaration or underpayment in respect of a royalty

Penalty in respect of any failure to deliver or furnish a royalty return

Penalty in respect of false royalty returns and information

Failure to submit an annual report according to Regulation 38

Other: to be considered e.g. relating to Notifiable Events (failure to notify); environmental & other Incidents; not achieving/exceeding environmental thresholds. A desktop study should be performed in connection with monetary penalties under comparable national regimes for extractive industries, including those relating to a broader range of breaches of the environmental provisions and failure to adhere to the Plan of Work annexed to an exploitation contract.

**Moved from:**

Appendix IV: Determination of a royalty liability

The third revised draft text of the Chair of the Open Ended Working Group on the Financial Terms of a Contract (ISBA/28/C/OEWG/CRP.6) – Moved in February 2024.

For explanation boxes and comments please refer to the Chair's text.

**To be placed:**

Relevant standard and guidelines on the royalty mechanism

**The text:**

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 applicable Standard.

**Applicable Royalty Rate** means the royalty rate set out in the applicable 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 applicable Standard.

**Average Grade** means the average metal content of the Relevant Metal calculated in accordance with the applicable Standard.

**Relevant Metal** means a metal contained in the mineral-bearing ore identified and determined in accordance with the applicable Standard.

**Relevant Metal Value(s)** means the gross market value(s) of a Relevant Metal calculated in accordance with the applicable Standard.

**Valuation Point** is the first point of transfer of the mineral-bearing ore by delivery onto a vessel transporting the ore out of the Contract Area. In the instance where the transfer of mineral-bearing ore onto another vessel does not take place, the valuation point shall be on board the original vessel before it leaves 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, as set out in the applicable Standard and ~~taking into account the any~~ Guidelines.

[1.bis. Additional Minerals

Additional Minerals shall be included in the calculation of the royalty should evidence become available that such minerals are being profitably extracted.

The Commission shall recommend to the Council for decision whether additional Minerals shall be included.

The inclusion of additional Minerals in the determination of the royalty shall constitute a review of rates of payments as described in Regulation 82.]

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 for that royalty return period] calculated in accordance with the Standard and taking into account the Guidelines.

**Moved from:**

Enclosure III: Draft Standard on the Financial Terms of a Contract

The revised draft text of the Co-Facilitators of the Informal Working Group on Institutional Matters (ISBA/28/C/IWG/IM/CRP.2) - Moved in February 2024.



For explanation boxes and comments please refer to the Chair's text.

**To be placed:**

Standard on the Financial Terms of a Contract

**The text:**

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 price (in United States dollars), quoted for manganese ore 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 [a period of [x] years commencing on the day following the last day of the First Period of Commercial Production.] [the period commencing on the day following the last day of the First Period of Commercial Production.]

[Third Period of Commercial Production means the period commencing on the day following the last day of the Second Period of Commercial Production.]

**Shipment** means each shipment of mineral-bearing ore by a vessel transporting the ore out of the Contract Area.

**Relevant Metals**

1. For the purpose of polymetallic nodules and appendix IV, [during the First Period of Commercial Production] Relevant Metals will be copper, nickel, cobalt and manganese [only].
- [2. During the Second Period of Commercial Production and subsequent periods of Commercial Production relevant metals will include copper, nickel, cobalt and manganese and may include other metals and substances, but only if there is substantial evidence that such other metals and substances are being processed from mineral-ore mined under the Exploitation Contract and are substantially increasing the value of polymetallic nodules mined in the area and in such case additional Standards will be published providing for the inclusion of these other metals and substances in aggregate relevant metal value.]

**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 Standards and any Guidelines.

**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.

### **Calculation of Relevant Metal Value and Aggregate Relevant Metal Value**

1. The value of the mineral-bearing ore for a royalty return period shall be the Aggregate Relevant Metal Value for that period.
2. 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.
3. 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.

### **Determination of the Applicable Royalty Rate**

The Applicable Royalty Rate shall be:

1. For the First Period of Commercial Production, [~~2~~-3 %]; and  
[1. Alt. For the First Period of Commercial Production, [12%]; and]
2. [For][From] the Second Period of Commercial Production, a rate no less than [~~5~~-7.5 %] and no greater than [~~9~~-12.5 %] determined by reference to the table below and the Notional Relevant Metal Value:  
[2. Alt. [For][From] the Second Period of Commercial Production, a rate no less than [12%] and no greater than [25%] determined by reference to the table below and the Notional Relevant Metal Value:]

Where:

- (a) Notional Relevant Metal Value means the [average Aggregate Relevant Metal Value per dry metric ton across all Shipments during the royalty return period].
- (b) The [average Aggregate Relevant Metal Value per dry metric ton across all Shipments during the royalty return period] shall be calculated by dividing the Aggregate Relevant Metal Value for that royalty return period by the total Quantity shipped during that royalty return period.

<b>Notional Relevant Metal Value</b>	<b>Applicable Royalty Rate</b>
<i>[(as may be adjusted in accordance with the Standards and Guidelines)]</i>	<b>[for][from] Second Period of Commercial Production</b>

Less than [US\$850] [US\$ 510] per dry metric ton ( $x < [US\$850/t]$ [US\$ 510/t])	[5 7.5 %] [alt [12%]]
Greater than or equal to [US\$850] [US\$ 510] per dry metric ton but less than [US\$925] [US\$ 580] per dry metric ton ( $[US\$850/t]$ [US\$10 X/t] $\leq x < [US\$925/t]$ [US\$ 580/t])	[6 8.75 %] [alt [15.3%]]
Greater than or equal to [US\$925] [US\$ 580] per dry metric ton but less than [US\$1,000] [US\$ 650] per dry metric ton ( $[US\$925/t]$ [US\$ 580/t] $\leq x < [US\$1,000/t]$ [US\$ 650/t])	[7 10 %] [alt [18.5%]]
Greater than or equal to [US\$1,000] [US\$ 650] per dry metric ton and less than [US\$1,075] [US\$ 720] per dry metric ton ( $[US\$1,000/t]$ [US\$ 650/t] $\leq x < [US\$1,075/t]$ [US\$ 720/t])	[8 11.25 %] [alt [21.8%]]
Greater than or equal to [US\$1,075] [US\$ 720] per dry metric ton ( $[US\$1,075/t]$ [US\$ 720/t] $\leq x$ )	[9 12.5 %] [alt [25%]]

### **[Commercial Production**

1. Commercial Production shall commence on the date that recovery, for commercial purposes, of Minerals from the relevant Mining Area has reached at least [60%] of the design capacity outlined in the initial production phase of the Mining Work Plan for that Mining Area for [90] consecutive Days.
2. Recovery, for the purposes of Commercial Production, shall take place at the point at which Minerals from the Mining Area are transferred to a vessel directly following collection or removal from the seabed and ocean floor and subsoil thereof.
3. Once the Contractor determines that it is engaging in sustained large-scale recovery operations meet the criteria for the commencement of Commercial Production as set out in paragraph 1 above, which yield a quantity of materials in excess of the thresholds specified in the Standards, the Contractor shall promptly notify the Secretary-General of the proposed date of commencement of Commercial Production together with supporting documentation and other evidence as specified in the Standards.
4. The Secretary-General shall transmit the notification and supporting documentation and evidence to the Commission, which shall consider the proposal and supporting materials and approve or reject the Contractor's proposed date.
5. Promptly following approval or rejection by the Commission, the Secretary-General shall, as applicable, confirm the date of commencement of Commercial Production to the Contractor, or notify the Contractor of the rejection and invite the Contractor to re-submit its proposed date of commencement of Commercial Production.
6. Upon confirmation, the Secretary-General shall notify members of the Authority, in particular coastal states [in close proximity] [adjacent] to the [Mining Area][Contract Area], that Commercial Production has commenced and the location of the Mining Area(s).
7. The date of commencement of Commercial Production, will be the date confirmed to the Contractor according to paragraph 5.
8. If the Authority [or Inspectorate] has reasonable grounds to believe that the Contractor's recovery rate does not achieve the level defined in their Plan of Work within [6 months] of the start of recovery operations, the Contractor shall be required to modify its Plan of Work in accordance with Regulation 57.
9. The Contractor shall submit any additional information requested by the Authority [or Inspectorate] within [30] Days of any such request by the Authority.]

### **[Methodology for the review of Rates of Payments**

1. In line with common practice in cross-country comparisons of fiscal regimes imposed on land-based Exploitation activities, the Commission, when undertaking a review pursuant to this Standard, will use average Effective Tax Rate (AETR) to make comparisons between the rates of payments for deep-sea mining operations and land-based mining operations exploiting similar minerals.

2. In addition, the Commission will draw on established methodology routinely used by intergovernmental organizations conducting such comparisons – for example, the International Monetary Fund’s Fiscal Analysis of Resource Industries (FARI) Methodology (see FARI Technical Notes & Manual, 2016).



3. The Commission will use the following information when conducting a review pursuant to this Standard:

- (a) Pre-tax net cashflows for a typical deep sea mining project;
- (b) Authority and government revenue from deep-sea mining operations; and
- (c) Government revenue from land-based mining operations exploiting the same or similar minerals.

***Pre-tax net cashflows for a typical deep-sea mining project***

4. The ISA Financial Model will be updated based on best available pre-tax net cashflows data for the five years preceding the most recent review of rates of payments.

5. The data referenced in paragraph 4 above will include prefeasibility studies submitted by Contractors as part of their Exploitation Contract application, feasibility studies submitted 12 months before the commencement of Commercial Production and any annual reporting required during Commercial Production.

***Authority and government revenue from deep-sea mining operations***

6. Along with royalty payments to the Authority, the Commission shall review the fiscal regimes of governments who either already generate revenue from Commercial Production undertaken by Contractor(s) in the Area or those governments who could generate such revenue in the future if Contractor(s) with existing Exploration contracts were to proceed with Commercial Production. For the purpose of information covered under this paragraph, the Commission will use the median rate of government revenue as the appropriate metric.

***Government revenue from land-based mining operations exploiting the same or similar minerals***

7. The Commission shall review the fiscal regimes of land-based mining jurisdictions that have accounted for at least 80% of global (excluding seabed mining) production of the same or similar minerals during the preceding five years. For example, when reviewing rates of payment for Contractors who exploit polymetallic nodules, the Commission will review land-based mining jurisdictions accounting for at least 80% of global (excluding seabed mining) nickel, copper, manganese, and cobalt mining production during the preceding five years. For the purpose of the information covered under this paragraph, the Commission will use the median rate of government revenue as the appropriate metric.

8. Subject to the review conducted pursuant to these Standards, if the AETR for mining in the Area is determined to differ from the AETR for land-based mining exploiting the same or similar minerals, the Commission shall propose a recommendation for consideration by the Council to adjust the rates of payments with a view to bringing the AETR for Contractors within the range of AETR for land-based mining operations exploiting the same or similar minerals.]

**Moved from:**

Proposal from the intersessional working group on a review of payment mechanism.

**To be placed:**

Proposed Standard on the review of the financial terms of a Contract.

**The text:**

Review of the system of payments and the rates of payments (Regulation 81 and 82)

Introduction and Guiding Principles

1. The purpose of the review of the system of payments and the rates of payments is to ensure that the financial needs and objectives of the Authority are being fulfilled. The review process shall be governed by the provisions of the Convention, the Agreement, relevant international standards, and Good Industry Practice in extractives sector taxation. Specifically, Section 8 of the Annex to the Agreement sets out the following principles:

(a) ‘The system of payments to the Authority shall be fair both to the contractor and to the Authority and shall provide adequate means of determining compliance by the contractor with such system [Paragraph 1(a), Section 8 of the Annex to the Implementation Agreement];

(b) ‘The rates of payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage [Paragraph 1(b), Section 8 of the Annex to the Implementation Agreement];

(c) ‘The system should not be complicated and should not impose major administrative costs on the Authority or on a contractor. Consideration should be given to the adoption of a royalty system or a combination of a royalty and profit-sharing system. If alternative systems are decided upon, the contractor has the right to choose the system applicable to its contract. Any subsequent change in choice between alternative systems, however, shall be made by agreement between the Authority and the contractor;’ [Paragraphs 1(c), Section 8 of the Annex to the Implementation Agreement]

Additionally, Article 13 of Annex III to the Convention sets out the following guiding objectives for the Authority:

(a) ‘to ensure optimum revenues for the Authority from the proceeds of commercial production [Convention, Annex III, Article 13.1(a).],

(b) ‘to attract investments and technology to the exploration and exploitation of the Area, [Convention, Annex III, Article 13.1(b).] and

(c) to ensure equality of financial treatment and comparable financial obligations for contractors’ [Convention, Annex III, Article 13.1(c)].

Any recommendation to adopt a new or revised system of payment or changes in the rates of payments must clearly demonstrate that the change will result in a payment regime that is significantly better at meeting the principles set forth under Article 13 of Annex III to the Convention and Section 8 of the Agreement.

Review Process

2. The Council shall regularly review both the system of payments and the rates of payments following the Commencement of Commercial Production in the Area.
3. The Council shall establish and regularly update a schedule for the review of the system of payments and the rates of payments following the commencement of Commercial Production in the Area.
4. The Secretary General shall ensure that the schedule referenced in paragraph 3 above is made publicly available.
5. Any review of the system of payments and rates of payments conducted pursuant to this Standard shall be completed within 12 months, unless otherwise decided by the Council.
6. The Council shall initiate the first review of the system of payments and the rates of payment on the five-year anniversary of the start of the first royalty period [i.e., January 1st or July 1st] corresponding to the first instance of commencement of Commercial Production in the Area. An illustrative example for a scenario is included in Figure 1 below.

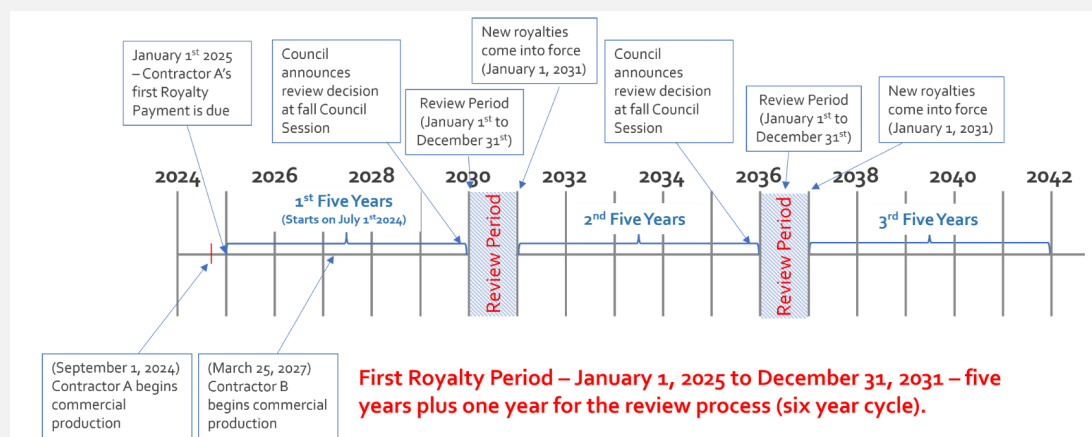


Figure 1: Example of a scenario with two Contractors entering Commercial Production at different times.

7. Subsequent reviews of the system of payments and rates of payments shall be initiated on a regular basis every five years following the conclusion of the 12 month period allocated for the previous review under paragraph 5.
8. Based on the review schedule, the Council shall ensure that adequate funds are allocated from the Authority's budget to undertake an effective and thorough review of the system of payments and rates of payments.
9. The Council shall task the Commission with preparing terms of reference for a review. The Council shall review and approve the terms of reference for the review at a Council meeting prior to the official scheduled initiation of the review process.
10. During a review, there should be a presumption that rates of payment and system of payments should not change unless there is evidence that rates currently in force have been set too high or too low, or that the system of payments is not performing as anticipated. Furthermore, any proposed change to the rates of payments and system of payments shall be material in nature and not an represent an administrative nuisance [e.g., change in rate of less than [#] percentage point should not be recommended].
11. The Commission will be responsible for:
  - (a) Undertaking the review
  - (b) Engaging third-party experts
  - (c) Ensuring consultations with relevant stakeholders, including Contractors, Sponsoring States, Member States eligible for a seat on Group C of the Council, the Enterprise, and the Economic

Planning Commission (once established).

(d) Providing the Council with recommendations, in accordance with the established timeframe set out in paragraph 7, on whether any adjustments are warranted along with a supporting rationale.

12. The Council shall consider the recommendations of the Commission and shall decide whether:

(a) to adjust the rates of payments and what the magnitude shall be for such adjustments; and

(b) to adjust the existing system of payments or introduce a new system of payments.

13. Should the Council decide to adjust the rates of payments or the system of payments, such adjustment shall:

(a) take effect from the beginning of the first royalty period following the Council's decision under paragraph 12 [i.e., January 1st or July 1st];

(b) apply to all future Contract Areas and all Contract Areas where the first five years of Commercial Production have elapsed by the time that the adjustment takes effect.

14. Should the Council decide to adjust the system of payment, such adjustment would require written consent from current Contractors and shall:

(a) Take effect from the beginning of the first royalty period following the Council's decision under paragraph 12 (i.e., January 1<sup>st</sup> or July 1<sup>st</sup>); and

(b) Apply to all future Contract Areas and all Contract Areas where the first five years of Commercial Production have elapsed by the time that the adjustment takes effect.

**Moved from:**

Proposal from the intersessional working group on a payment review mechanism

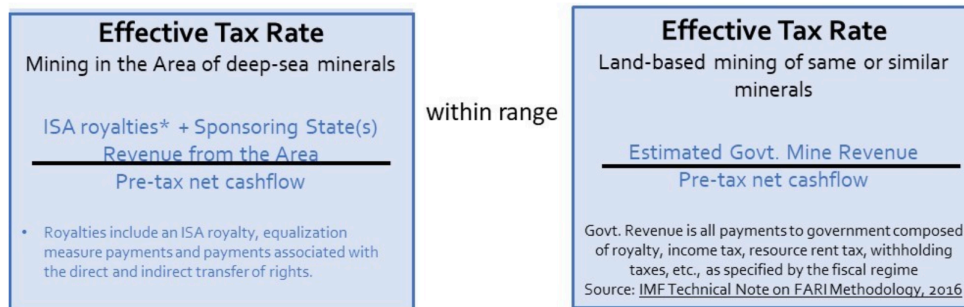
**To be placed:**

Standard on the methodology for the Review of Rates of Payments (Regulation 82)

**The text:**

1. In line with common practice in cross-country comparisons of fiscal regimes imposed on land-based mining operations, the Commission, when undertaking a review pursuant to this Standard, will use the average Effective Tax Rate (AETR) over the life of the mine to make comparisons between the rates of payments for deep-sea mining operations and land-based mining operations exploiting similar minerals.

2. In addition, the Commission will draw on established methodology routinely used by intergovernmental organizations conducting such comparisons – for example, the International Monetary Fund's Fiscal Analysis of Resource Industries (FARI) Methodology (see FARI Technical Notes & Manual, 2016).



3. The Commission will use the following information when conducting a review pursuant to this Standard:

- (a) Pre-tax net cashflows from the ISA Financial Model for a typical deep sea mining project
- (b) ISA and sponsoring state revenue from deep-sea mining operations, and forecasted ISA and sponsoring state revenue over the remaining years of the mine's life.
- (c) Royalties, royalty rates, taxes and tax rates from land-based mining jurisdictions and the effective tax rate these result in when applied to the pre-tax net cashflows from the ISA financial model of a deep-sea mine.

Pre-tax net cashflows for a typical deep-sea mining project

4. The ISA Financial Model will be updated based on best available pre-tax net cashflows data for the five years preceding the most recent review of rates of payments.

5. The data referenced in paragraph 4 above will include prefeasibility studies submitted by Contractors as part of their Exploitation Contract application, feasibility studies submitted 12 months before the Commencement of Commercial Production and any annual reporting required during Commercial Production.

ISA and government revenue from deep-sea mining operations

6. Along with royalty and other payments to the Authority, the Commission shall review the fiscal regimes of sponsoring states as they are applied to the taxation of mining in the area. This will include sponsoring states whose contractors have already entered commercial production and the sponsoring states of those contractors who may enter commercial production in the next five years.

Government revenue from land-based mining operations exploiting the same or similar minerals

7. The Commission shall review the fiscal regimes of land-based mining jurisdictions that have accounted for at least 80% of global (excluding seabed mining) production of the same or similar minerals during the preceding five years. For example, when reviewing rates of payment for Contractors who exploit polymetallic nodules, the Commission will review land-based mining jurisdictions accounting for at least 80% of global (excluding seabed mining) nickel, copper, manganese, and cobalt mining production during the preceding five years.

8. Subject to the review conducted pursuant to these Standards, if the AETR for mining in the Area is determined to differ from the AETR for land-based mining exploiting the same or similar minerals, the Commission shall propose a recommendation for consideration by the Council to adjust the rates of payments with a view to bringing the AETR for Contractors within the range of AETR for land-based mining operations exploiting the same or similar minerals.

**Moved from:**

Enclosure IV: Draft Guidelines in accordance with Regulations 95 in respect of the administration and management of royalties prescribed in Part VII

The revised draft text of the Co-Facilitators of the Informal Working Group on Institutional Matters (ISBA/28/C/IWG/IM/CRP.2) - Moved in February 2024.

For explanation boxes and comments please refer to the Chair's text.

**To be placed:**



In Guidelines in accordance with Regulations 95 in respect of the administration and management of royalties prescribed in Part VII

**The text:**

**Official Listings**

1. Official Listing in respect of copper means [appropriate reference to be determined].
2. Official Listing in respect of nickel means [appropriate reference to be determined].
3. Official Listing in respect of cobalt means [appropriate reference to be determined].
4. Official Listing in respect of manganese: [appropriate reference to manganese ore to be determined].

**Replacement of Official Listing**

If:

1. any of the indices or publications listed as an Official Listing ceases to be published or determinable for a period of [one month] and there are reasonable grounds on which to conclude that the index or publication will continue not to be published on a consistent basis in future; or
2. any of the indices or publications listed as an Official Listing does not, in the opinion of the [Council] fairly and reasonably, whether due to persistent errors or omissions, a change in its methodology or for any other reason, reflect the fair market price of the Relevant Metal,

then the [Council] may determine a replacement Official Listing for the Relevant Metal, which shall be:

- (a) the price for the Relevant Metal quoted on a recognized international mineral exchange or market;
- (b) the published price for the Relevant Metal in a publication recognized for quoting or publishing prices of metals in an international market; or
- (c) based on recommendations of the Commission [and following consultation with Contractors], a formula determined by the Council.

**Worked example of royalty calculation**

The following provides a worked example of the calculation of the royalty in accordance with Regulation 64, appendix IV, the applicable Standard and these applicable Guidelines. This is for illustrative purposes only.

**WORKED EXAMPLE 1:**

(see Worked Example 2 for details)	<b>Copper</b>	<b>Nickel</b>	<b>Cobalt</b>	<b>Manganese</b>
	Quantity (DMT) x Average Grade (%) x Average Listed Price (USD/t)	Quantity (DMT) x Average Grade (%) x Average Listed Price (USD/t)	Quantity (DMT) x Average Grade (%) x Average Listed Price (USD/t)	Quantity (DMT) x Average Grade (%) x Average Listed Price (USD/t)
<b>Shipment 1</b>	US\$47,025,000	US\$128,700,000	US\$49,500,000	US\$62,622,000
<b>Shipment 2</b>	US\$57,750,000	US\$169,000,000	US\$62,000,000	US\$67,450,000
<b>Shipment 3</b>	US\$75,625,000	US\$171,600,000	US\$73,700,000	US\$70,290,000
<b>Relevant Metal Value (US\$)</b>	US\$180,400,000	US\$469,300,000	US\$185,200,000	US\$200,362,000
<b>Aggregate Relevant Metal Value (US\$)</b>	US\$1,035,262,000			
<b>Royalty Rate</b>	First Period of Commercial Production	3%		
	Second Period of Commercial Production	Notional Relevant Metal Value	US\$1,035,262,000 / 1,500,000 DMT = US\$690/t	
		11.25%		
<b>Royalty payable (First Period of Commercial Production)</b>	US\$1,035,262,000 x 3% = US\$31,057,860			
<b>Royalty payable (Second Period of Commercial Production)</b>	US\$1,035,262,000 x 11.25% = US\$116,466,975			

**WORKED EXAMPLE 2:**

1. Calculation of royalty payable (see Appendix IV)

Applicable Royalty Rate multiplied by the Aggregate Relevant Metal Value

$$= 2.3\% \times \text{US\$1,591,760,000} + \text{US\$1,035,262,000} = \text{US\$31,835,200} + \text{US\$31,057,860}$$

(First Period of Commercial Production) Or

$$= 8.125\% \times \text{US\$1,591,760,000} + \text{US\$1,035,262,000} = \text{US\$127,340,800} + \text{US\$116,466,975}$$

(Second Period of Commercial Production, if two stage variable ad valorem)

2. Applicable Royalty Rate (see Standard)

If during First Period: **2.3%**

If during Second Period: **8.125%** (two stage variable ad valorem)

where **8.125%** based is on a Notional Relevant Metal Value of **US\$1,061/t**  
**US\$690/t** (as per table in Standard)

*Notional Relevant Metal Value*

= Aggregate Relevant Metal Value / total Quantity

$$= \text{US\$1,591,760,000}$$

$$+ \text{US\$1,035,262,000} /$$

$$1,500,000 \text{ DMT}$$

$$= \text{US\$1,061} + \text{US\$690} \text{ per ton}$$

3. Aggregate Relevant Metal Value (see Standard)

Aggregate Relevant Metal Value = the aggregate of the Relevant Metal Value for each Relevant Metal during the royalty return period

= Relevant Metal Value for copper + Relevant Metal Value for nickel + Relevant Metal Value for cobalt + Relevant Metal Value for manganese

$$= \text{US\$180,400,000} + \text{US\$469,300,000} +$$

$$\text{US\$185,200,000} + \text{US\$756,860,000}$$

$$+ \text{US\$200,362,000}$$

$$= \text{US\$1,591,760,000}$$

$$+ \text{US\$1,035,262,000}$$

Relevant Metal Value for Copper:

1. For each Shipment of copper:

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

2. For the royalty return period:

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

Therefore, assuming 3 Shipments:

	Quantity (DMT)	Average Grade (%)	Average Listed Price (US\$/t)	Relevant Metal Value (US\$)
<b>Shipment 1</b>	450000	1.10%	9500	47025000
<b>Shipment 2</b>	500000	1.10%	10500	57750000
<b>Shipment 3</b>	550000	1.10%	12500	75625000
<b>Aggregate for royalty return period</b>				180400000

Relevant Metal Value for Nickel:

1. For each Shipment of nickel:

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

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:

	Quantity (DMT)	Average Grade (%)	Average Listed Price (US\$/t)	Relevant Metal Value (US\$)
<b>Shipment 1</b>	450000	1.30%	22000	128700000
<b>Shipment 2</b>	500000	1.30%	26000	169000000
<b>Shipment 3</b>	550000	1.30%	24000	171600000
<b>Aggregate for royalty return period</b>				469300000

Relevant Metal Value for Cobalt:

1. For each Shipment of cobalt:

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

2. For the royalty return period:

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

Therefore, assuming 3 Shipments:

	Quantity (DMT)	Average Grade (%)	Average Listed Price (US\$/t)	Relevant Metal Value (US\$)
<b>Shipment 1</b>	450000	0.20%	55000	49500000
<b>Shipment 2</b>	500000	0.20%	62000	62000000
<b>Shipment 3</b>	550000	0.20%	67000	73700000
<b>Aggregate for royalty return period</b>				185200000

Relevant Metal Value of Manganese:

1. For each Shipment of manganese:

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

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:

	Quantity (DMT)	Average Grade (%)	Average Listed Price (US\$/t)	Relevant Metal Value (US\$)
Shipment 1	450000	28.40%	<del>1500</del> 490	<del>191700000</del> 62622000
Shipment 2	500000	28.40%	2000 475	284000000 67450000
Shipment 3	550000	28.40%	<del>1800</del> 450	281160000 70290000
Aggregate for royalty return period				756860000 200362000

**Moved from:**

Schedule

**To be placed:**

Reinserted if needed

**The text:**

“**Additional Royalty**” means the additional royalty payable in accordance with Regulations [64 bis] and [64 ter].

“**Allowable Sponsoring State Tax**” has the meaning given in Regulation [64 ter].

“**Applicable Additional Royalty Rate**” is the rate determined in the applicable Standard.

“**Assumed CIT Rate**” is the rate determined in the applicable Standard.

“**Covered Taxes**” has the meaning given to that term in the Pillar 2 Global Anti-Base Erosion Model Rules published by the OECD from time to time.

“**Ecosystem Approach**” means a comprehensive, integrated [and interdisciplinary] approach to the management of human activities based on the Best Available Scientific [Information]/[Evidence] and, where available, relevant traditional knowledge of Indigenous Peoples and local communities that accounts for marine ecosystems and their dynamics, to achieve ecosystems’ conservation and sustainable use of, and the avoidance of interference with, the ecological balance of the Marine Environment.

[Alt. “**Ecosystem Approach**” means a comprehensive, integrated and interdisciplinary approach to the management of human activities based on the Best Available Scientific Knowledge to balance ecological, social and governance principles at appropriate temporal and spatial scales in a distinct geographical area to achieve ecosystem conservation and sustainable resource use. Scientific knowledge and effective monitoring are used to acknowledge connections, integrity and biodiversity within an ecosystem along with its dynamic nature and associated uncertainties. The ecosystem-based approach recognizes coupled socio-ecological systems, with stakeholders involved in an integrated and adaptive management process where decisions reflect societal choice.]

**“Equalization Measure Audit”** means an audit in respect of a Contractor carried out in accordance with the relevant Standard and applicable Guidelines to determine whether the Contractor has any tax exemptions or receives any Subsidies from its Sponsoring State.

**“Inclusion Criteria”** means a substantial (but not necessarily the majority or primary) part of (i) its business is connected to or associated with, and/or (ii) its revenues are derived from, mining, harvesting, transporting, processing and/or sale of Minerals or Metals obtained under an Exploitation Contract.

**“Income”** has the meaning given to ‘GloBE Income’ in the Pillar 2 Global Anti-Base Erosion Model Rules published by the OECD [from time to time].

**“Large Scale Production”** means exploitation, production or removal from the Area of Mineral-bearing ore in a quantity which is in excess of the thresholds specified in the Standards.