



## Finance Committee

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Item 11 of the provisional agenda\*

**Development of rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area pursuant to section 9, paragraph 7 (f), of the annex to the 1994 Agreement**

## **Development of rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area pursuant to section 9, paragraph 7 (f), of the annex to the 1994 Agreement**

### **I. Introduction**

1. At the twenty-sixth session of the Authority, the Finance Committee submitted a comprehensive report to the Council and the Assembly on the progress made on the topic of development of rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area pursuant to section 9, paragraph 7 (f), of the annex to the 1994 Agreement relating to the Implementation of Part XI (1994 Agreement) of the United Nations Convention on the Law of the Sea of 10 December 1982 (the Convention) for their consideration.<sup>1</sup>

2. Having analysed and discussed the report, the Council and the Assembly requested the Committee to develop a detailed proposal for the establishment of a seabed sustainability fund as an alternative or adjunct to the direct distribution of monetary benefits derived from activities in the Area, for consideration by the Assembly at its twenty-eighth session.<sup>2</sup> The Committee welcomed the request by the Council and Assembly and invited the secretariat to proceed to prepare a draft proposal for the establishment of a seabed sustainability fund.<sup>3</sup>

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\* ISBA/29/FC/L.1

<sup>1</sup> ISBA/26/A/24-ISBA/26/C/39.

<sup>2</sup> ISBA/27/FC/2, para. 9.

<sup>3</sup> ISBA/27/A/8-ISBA/27/C/36, para. 18.

3. In response to that request, the Secretary-General presented a report containing a draft proposal for the establishment of a seabed sustainability fund, as well as key guiding questions to support the discussion of the Committee at its meetings in 2023 during the twenty-eighth session of the Authority.<sup>4</sup>

4. It is recalled that the Committee discussed the report of the Secretary-General during its remote informal meeting on 14 June 2023 and at its formal session on 6 July 2023. The Committee considered the guiding questions contained in paragraph 31 of the report and developed a draft of the objectives of the proposed fund, proposing also that it be referred to henceforth as the Common Heritage Fund. The Committee suggested that with the establishment of a Common Heritage Fund, the financial benefits from activities in the Area could be used to invest in people and in preserving and developing the Area sustainably. The rationale behind its establishment is to create and maintain inherent value for generations to come from the resources of the Area. In this regard, the objective of the Fund would be to invest in capacity development, knowledge and competence related to the ocean with a view to enhancing the contributions of the Authority to the implementation of the 2030 Agenda for Sustainable Development and the achievement of the Sustainable Development Goals. With respect to the governance of the Common Heritage Fund, the Committee reiterated the need to apply an evolutionary approach to the creation and functioning of its organs, as reflected in the 1994 Agreement and as already endorsed by the Council and the Assembly.<sup>5</sup>

5. At the twenty-eighth session of the Authority in July and August 2023, the Council and the Assembly took note of and welcomed the progress made by the Finance Committee on the topic of equitable sharing of financial and other economic benefits derived from activities in the Area and supported the possible creation of a Common Heritage Fund, without prejudice to the further consideration of other mechanisms for the equitable sharing of financial benefits.

6. In line with the decision of the Committee to provide a more comprehensive report to the Council and the Assembly in due course on the subject of the equitable sharing of financial benefit deriving from activities in the Area,<sup>6</sup> the purpose of the present document is to respond to the specific request of the Committee to the Secretary-General to draft a framework for financial regulations on the treatment of funds received from activities in the Area.<sup>7</sup> The document is not intended to address the broader question of whether the Common Heritage Fund should exist in conjunction with, or as an alternative to, direct distribution of funds from activities in the Area. Furthermore, the existence of the Fund would not preclude the possibility of direct distribution of funds.

## **II. Development of draft financial regulations of the Common Heritage Fund**

7. The draft Financial Regulations annexed to this document are intended to provide for the establishment of the Common Heritage Fund and outline its administration. It is important to take into account that the Convention and the 1994 Agreement, together with the Financial Regulations of the Authority, already make provision for the treatment of income received by the Authority from all sources and the draft regulations of the proposed Fund have been drafted in line with and consistently with existing provisions.

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<sup>4</sup> ISBA/28/FC/4

<sup>5</sup> ISBA/27/FC/2, para 6.

<sup>6</sup> ISBA/28/A/4, para 26.

<sup>7</sup> ISBA/27/A/8, para 17.

8. According to regulation 6 of the Financial Regulations of the Authority, the funds of the Authority shall include inter alia: a) assessed contributions made by States members of the Authority; b) agreed contributions, as determined by the Authority, made by international organizations members of the Authority in accordance with annex IX to the Convention; c) funds received by the Authority pursuant to annex III, article 13, of the Convention and section 8 of the annex to the 1994 Agreement in connection with activities in the Area; d) funds transferred from the Enterprise in accordance with annex IV, article 10 of the Convention<sup>8</sup>; e) voluntary contributions made by members or other entities; and f) such other funds to which the Authority may become entitled or may receive, including income from investment.

9. Pursuant to article 171 of the Convention, the administrative expenses of the Authority shall be a first call upon the funds of the Authority. At present these expenses are funded mainly by assessed contributions from member States, determined according to the scale used for the regular budget of the United Nations, adjusted for differences in membership. In accordance with regulation 5.1, assessed contributions from member States and agreed contributions from international organizations are credited to the general administrative fund (GAF). The amount required from member States to fund the GAF has been partially offset in recent years by fees levied on contractors for certain services as well as application fees for plans of work for exploration.

10. Over time, as income from activities in the Area increases, the assessed contributions of member States will be reduced and eventually phased out altogether. When the amount of income from activities in the Area exceeds the amount needed to fund the GAF, the remaining funds must be allocated in one or more of the following ways: a) to provide the Enterprise with funds in accordance with article 170, paragraph 4 of the Convention, as read with Section 2 of the annex to the 1994 Agreement; b) to compensate developing States in accordance with article 151, paragraph 10, and article 160, paragraph 2(1) of the Convention through the Economic Assistance Fund; (c) for equitable sharing of monetary benefits, in accordance with article 140 and article 160 (2) (g) of the Convention.

11. It follows from the above that the Common Heritage Fund would exist as a special fund comprised of funds received from activities in the Area and funds transferred from the Enterprise in accordance with annex IV, article 10 of the Convention, less the amounts from such funds required to finance the GAF, support the Economic Assistance Fund, and to be transferred to the Enterprise in accordance with article 170, paragraph 4 of the Convention, as read with Section 2 of the annex to the 1994 Agreement, and to be shared according to a formula for equitable sharing. This implies a possibility for the Authority to decide at a later date whether to share revenues through the use of an agreed equitable sharing formula or to transfer all or part of the revenue to the Common Heritage Fund.

12. From the foregoing, it is apparent that the financial regulations of the Common Heritage Fund shall adhere to and build upon the Financial Regulations of the Authority, as the latter govern the financial administration of all the funds of the Authority. The Financial Regulations and rules of the Authority indeed apply, *mutatis mutandis*, to all matters not specifically dealt with in the Financial Regulations of the Common Heritage Fund.

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<sup>8</sup> Under Article 10 of Annex IV of the UNCLOS, as read with the 1994 Agreement, the Enterprise is liable to make payments to the Authority with respect to activities in the Area on the same basis as contractors. The Enterprise is also required to transfer its net income to the Authority, less the amount required as reserves, subject to an exemption for the first 10 years of commercial production. All payments from the Enterprise to the Authority become funds of the Authority.

13. Furthermore the draft financial regulations contain provision for a governance structure, that includes a Management Board, a Scientific Advisory Board, a Performance Audit Board and the Secretariat. In accordance with the evolutionary approach to the establishment and functioning of the organs and subsidiary organs of the Authority, as reflected in the 1994 Agreement, it is anticipated that the functions of the Management Board and the Scientific Advisory Board will be respectively performed by the Finance Committee and the Legal and Technical Commission of the Authority, until such time as the Assembly decides otherwise.

### **III. Recommendation**

14. The Finance Committee is invited to consider the draft financial regulations for the Common Heritage Fund.

## Annex

### Draft Financial Regulations of the Common Heritage Fund

#### INTRODUCTORY NOTE

The United Nations Convention on the Law of the Sea entered into force on 16 November 1994. On 28 July 1994, the General Assembly of the United Nations adopted the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea. The Agreement entered into force on 28 July 1996.

According to the Agreement, its provisions and Part XI of the Convention shall be interpreted and applied together as a single instrument; these Regulations and references in these Regulations to the Convention shall be interpreted and applied accordingly.

#### *Regulation 1*

##### *Applicability*

1.1 These Regulations shall govern the financial administration of the Common Heritage Fund.

1.2 For the purpose of these Regulations:

- (a) "Agreement" means the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982;
- (b) "Authority" means the International Seabed Authority;
- (c) "Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982;
- (d) "funds of the Authority" means the sources of revenue to the Authority specified in Article 171 of the Convention and Regulation 6 of the Financial Regulations;
- (e) "Financial Regulations" means the Financial Regulations of the Authority as amended from time to time.
- (f) "member of the Authority" means any State Party to the Convention;
- (g) "Secretary-General" means the Secretary-General of the International Seabed Authority;

#### *Regulation 2*

##### *The Common Heritage Fund*

2.1 There is hereby established the Common Heritage Fund.

2.2 The following funds of the Authority shall be credited to the Common Heritage Fund:

- (a) Payments made in connection with activities in the Area received by the Authority in line with the financial terms of contracts pursuant to paragraph 1, section 8 of the annex to the Agreement and Article 13, Annex III of the Convention; ;
- (b) Funds transferred from the Enterprise in accordance with annex IV, article 10, of the Convention,  
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- (c) The amount of such funds required to finance the appropriations voted by the Assembly to support the administrative expenses of the Authority.
- (d) Funds used to provide the Enterprise with funds in accordance with article 170, paragraph 4, of the Convention.

(e) Funds set aside for the purposes of the economic assistance fund referred to in paragraph 1(a) of section 7 of the annex to the Agreement, pursuant to Financial Regulation 5.7(c).

[(f) Funds shared in accordance with article 140 and article 160, paragraph 2 (g) of the Convention.]

### ***Regulation 3***

#### *Objectives of the Common Heritage Fund*

The objective of the Common Heritage Fund is to invest in capacity development, scientific knowledge of the Area [ocean] acquisition and valorization and competence related to the ocean with a view to enhance the contributions of the Authority to the effective implementation of the Convention and other relevant global commitments [including the 2030 Agenda for Sustainable Development].

### ***Regulation 4***

#### *Activities eligible for funding*

The activities to be financed by the Common Heritage Fund in accordance with the policies and guidelines of the Authority include:

(a) funding research in support of advancing knowledge and protection of the deep-sea and ecosystems functions with a special focus on deep-sea benthic habitats and migratory species present in the Area;

(b) scaling up the network and capacity on ocean data and science, including in support to the creation of area-based management tools in areas beyond national jurisdiction and support for national and regional level investments in advancing scientific research and marine data;

(c) providing qualified scientists and technical personnel from developing States with opportunities to participate in international marine scientific research programmes, including through on board training, technical assistance and scientific cooperation programmes;

(d) contributing to the design, development and implementation of dedicated capacity development programmes and activities aligned with the priority needs identified by developing members of the Authority and with the capacity development strategy of the Authority;

(e) developing and strengthening the institutional capacity of developing countries including through assistance in the development of national legislation, deep-sea literacy and technology hubs.

(f) establishing and running of regional training centres as foreseen under article 276 of the Convention and in conformity with the priorities identified under article 140 of the Convention.

### ***Regulation 5***

#### *Investment of funds*

5.1 The Secretary-General may make short-term investments of a non-speculative nature, of moneys not needed for immediate requirements and shall inform the [Management Board] periodically of such investments which he or she has made.

5.2 The Secretary-General may, after consultations with an investment counsellor appointed on the recommendation of the Management Board, make long-term investments of moneys standing to the credit of the Common Heritage Fund, having regard to requirements as to the liquidity of the Fund.

5.3 Income derived from investments shall be credited to the Common Heritage Fund.

**Regulation 6**

*Accounting and financial reporting*

The Secretary-General shall maintain separate records and ledger accounts in respect of the funds deposited in the Common Heritage Fund and disbursements made therefrom. Accounting, internal control and audit will be in accordance with the financial regulations and rules of the Authority.

**Regulation 7**

*Administration of the funds*

7.1 The funds credited to the Common Heritage Fund shall be administered by its Secretariat.

7.2 An administrative overhead charge in an amount to be determined by the Management Board from time to time shall be recovered by the Secretariat from the Common Heritage Fund for the administration of its funds.

**Regulation 8**

*Management Board*

8.1 There is hereby established the Management Board as one of the functional bodies of the Common Heritage Fund.

8.2 The Management Board shall be composed of [number] members, elected by the Assembly of the Authority for a term of [number] years. In the election of members of the Management Board, due account shall be taken of the need for equitable geographical distribution and the representation of special interests.

8.3 The Management Board shall adopt and amend, as required, its own Rules of Procedure.

8.4 The Management Board shall hold regular sessions at least once every year. Special sessions of the Management Board shall be held at such other times as may be deemed necessary by the Management Board.

8.5 The functions of the Management Board shall be to:

- (a) provide policy direction and guidance and adopt such recommendations as necessary for the attainment of the objectives of the Common Heritage Fund indicated in Regulation 3;
- (b) adopt, at its first session, and periodically review the strategic priorities for enhancing capacity development, scientific knowledge of the Area [ocean] acquisition and valorization and competence related to the ocean;
- (c) endorse workplans, budgets, progress reports and activities' proposals, in line with Regulation 4, submitted by the Secretariat;
- (d) establish and maintain cooperation with relevant international organizations and treaty bodies;
- (e) consider and propose to the Assembly amendments to these Regulations;
- (f) perform such other functions as may be necessary for the fulfilment of the objectives of the Common Heritage Fund;

8.6 The Management Board shall report annually to the Assembly of the Authority.

### ***Regulation 9***

#### *Scientific Advisory Board*

9.1 There is hereby established the Scientific Advisory Board as one of the functional bodies of the Common Heritage Fund.

9.2 The Scientific Advisory Board shall be composed of [number] members, appointed by the Assembly of the Authority for a term of [number] years. In the appointment of members of the Scientific Advisory Board, due consideration shall be given to the need for a balanced representation of scientific expertise and disciplines relevant to the objectives of the Common Heritage Fund.

9.3 The Scientific Advisory Board shall adopt and amend, as required, its own Rules of Procedure.

9.4 The Scientific Advisory Board shall hold regular sessions once a year. Special sessions of the Scientific Advisory Board shall be held at such other times as may be deemed necessary by the Scientific Advisory Board.

9.5 The functions of the Scientific Advisory Board shall be to:

- (a) provide scientific advice and recommendations to the Management Board and the Secretariat on matters related to capacity development, scientific knowledge of the Area acquisition, and valorization, as well as competence related to the ocean;
- (b) evaluate research proposals and scientific initiatives for funding consideration, ensuring alignment with the strategic priorities set by the Management Board;
- (c) collaborate with the Secretariat in the design and implementation of scientific programs supported by the Common Heritage Fund;
- (d) review and provide feedback on progress reports and outcomes of scientific activities funded by the Common Heritage Fund;
- (e) advise on emerging scientific trends and developments relevant to the objectives of the Common Heritage Fund.

9.6 The Scientific Advisory Board shall report annually to the Assembly, providing updates on its activities and recommendations for enhancing the scientific impact of the Common Heritage Fund.

### ***Regulation 10***

#### *Evolutionary approach*

In accordance with the evolutionary approach to the establishment and functioning of the organs and subsidiary organs of the Authority, as reflected in the Agreement, the functions of the Management Board and the Scientific Advisory Board shall be respectively performed by the Finance Committee and the Legal and Technical Commission of the Authority, until such time as the Assembly decides otherwise.

### ***Regulation 11***

#### *Performance Audit Board*

11.1 There is hereby established the Performance Audit Board as one of the functional bodies of the Common Heritage Fund.

11.2 The Performance Audit Board shall be composed of [number] members, appointed by the Assembly of the Authority for a term of [number] years. In the appointment of members of the Performance Audit Board, due consideration shall be given to individuals with expertise in audit, evaluation, and performance assessment.



11.3 The Performance Audit Board shall adopt and amend, as required, its own Rules of Procedure.

11.4 The Performance Audit Board shall hold regular sessions once every year. Special sessions of the Performance Audit Board shall be held at other times as may be deemed necessary by the Performance Audit Board.

11.5 The functions of the Performance Audit Board shall be to:

- (a) conduct performance audits of the activities funded by the Common Heritage Fund to assess efficiency, effectiveness, and compliance with regulations and guidelines;
- (b) review financial and performance reports submitted by the Secretariat and provide independent assessments;
- (c) make recommendations to the Management Board for improvements in the administration and utilization of the Common Heritage Fund;
- (d) ensure accountability and transparency in the financial and operational aspects of the Common Heritage Fund.

11.6 The Performance Audit Board shall report annually to the Assembly, presenting its findings, recommendations, and any other matters pertinent to the performance evaluation of the Common Heritage Fund.

### ***Regulation 12***

#### *Secretariat*

12.1 The Secretariat of the Authority shall be the Secretariat of the Common Heritage Fund.

12.2 The functions of the Secretariat shall be to:

- (a) administer the funds of the Common Heritage Fund in accordance with Regulation 8;
- (b) arrange for and provide administrative support for the sessions of the bodies of the Common Heritage Fund;
- (c) assist the bodies of the Common Heritage Fund in carrying out their functions, including by performing any tasks that they may assign to it;
- (d) prepare any document to be submitted to the Management Board and the Scientific Advisory Board which is necessary for the exercise of their functions, including
  - i. proposals for activities to be financed through the Common Heritage Fund for consideration by the Management Board;
  - ii. budgetary and financial reports;
  - iii. progress reports on activities endorsed by the Management Board;
- (e) monitor the implementation of activities endorsed by the Management Board;
- (f) report annually on its activities to the Management Board;
- (g) cooperate with other relevant organizations, treaty bodies, partner countries and institutions as well as other relevant stakeholders, including technical experts, for the achievement of the objectives of the Common Heritage Fund.

***Regulation 13***

*General provisions*

The Financial Regulations and rules of the Authority shall apply, *mutatis mutandis*, to all matters not specifically dealt with under the present Regulations.

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