

Briefing note for the Webinar on Environmental Compensation Fund

21 June 2022, 8-9:30 am Jamaica time

Hosted by Dr Taga, Facilitator of the Informal Working Group on the Protection and Preservation of the Marine Environment

Background to the webinar

1. The idea of having a webinar on the environmental compensation fund comes from the discussions on the Facilitator's text (ISBA/27/C/IWG/ENV/CRP.1) during the first meeting of the Council's Informal Working Group on the Protection and Preservation of the Marine Environment in March 2022.
2. During the discussion in respect of the provisions on the environmental compensation fund in the Draft regulations, delegations stressed the significance of the environmental compensation fund and suggested the addition of further details, such as rules and procedures for the fund. The suggestion was also made that further discussion on the purpose of the fund and its funding would be necessary. Furthermore, there have also been asked for more discussions on the differences between the Environmental Compensation Fund and the Sustainability Fund.
3. During the March's meeting, a reference was also made to the ISA Technical Study no. 27 which is entitled Study on an Environmental Compensation Fund for Activities in the Area. This Study is a useful background source of information, in particular its section 6.
4. In light of this, the Facilitator of the Informal Working Group on the Protection and Preservation of the Marine Environment offered to host an informational webinar on the proposed Environmental Compensation Fund around mid-June, after delegations have had time to go through the relevant technical study.

Purpose of the webinar

5. The purpose of the webinar is not to negotiate provisions on the Environmental Compensation Fund which are in my Facilitator's Text (ISBA/27/C/IWG/ENV/CRP.1). This is not a meeting of the Council. Any negotiations will be for the meetings of the Informal Working Group on the Protection and preservation of the Marine Environment during the second part of the twenty-seventh session of the Council in July 2022.
6. Instead, the purpose of the webinar is to provide some background information on the purpose and modalities of operation of the Environmental Compensation Fund and to set out the differences between that fund and other funds envisaged under the overall system for activities in the Area, including the proposed Seabed Sustainability Fund.

Guiding questions

7. The Environmental Compensation Fund is established to address the liability gap identified in the ITLOS Seabed Disputes Chamber Advisory Opinion, that is, as a last recourse for compensation where there is liability, but the entity that is liable, which could be either the contractor or the sponsoring State, cannot pay, and the liability is not covered by insurance.
8. As such, the presentations today will aim to answer the following guiding questions:
 - (1) What is the liability regime set out in UNCLOS and explained in the advisory opinion?

- (2) Does the Fund intend to replace the liability regime in UNCLOS or to implement article 235 of UNCLOS?
- (3) What kind of damage is to be compensated? In other words what is the rationale for the Environmental Compensation Fund.
- (4) Whom is to be compensated? In other words which entities are eligible for compensation.
- (5) What will be the modalities of the Fund?

9. It was noted that during the discussions in March, several detailed questions were raised about the Fund, including

- (a) how the funds and any interests generated will be managed and by whom;
- (b) when and how disbursements, reimbursements and refunds can be made;
- (c) what the process for assessing the fund would be;
- (d) the standard of proof that would be required;
- (e) the types of damages and purposes for which access to the fund is eligible;
- (f) what happens if there is damage to the environment before the money is paid;
- (g) the basis for assessing the amount to be paid by contractors;
- (h) whether affected coastal states would be involved in the decisions on how to use funds to implement the activities;
- (i) whether these issues should be addressed in the Regulations or in the rules and procedures for the Environmental Compensation Fund?

10. The presentations intend to clarify some of these issues.

Structure of the webinar and housekeeping rules

11. The first part of the webinar will consist of three presentations.

12. The first presentation will be made by Professor Lorenzo Schiano di Pepe from the University of Genoa. He will present the major findings of the ISA Technical Study n. 27 "Study on an Environmental Compensation Fund for activities in the Area"¹, with a focus on issues raised in Chapter 6 of that study.

13. The second presentation will be delivered by Mr. Stefaan Depypere, currently a consultant on European Affairs, Competition Policy, Trade Policy and Ocean Governance and Chair of the South East Atlantic Fisheries Organisation. He will be focusing on the Seabed Sustainability Fund as a vehicle for distribution of benefits from activities in the Area.

14. The third presentation is made by Mrs. Lea Weis, Legal Officer (Regulatory Affairs) who has recently joined the Secretariat. In her presentation, she will draw a comparison between the Environmental Compensation Fund and the Seabed Sustainability Fund. This comparison will highlight the peculiarities of the Environmental Compensation Fund.

15. After the three presentations, the remaining time will allow for a question-and-answer session. At that time, I will open the floor for questions from the participants. The webinar will be recorded for internal purposes and use of the Secretariat. It will not be uploaded to the webpage.

Kingston, 14 June 2022

¹ https://isa.org.jm/files/files/documents/ISA_Technical_Study-27.pdf