



Response to the International Seabed
Authority's Draft Regulations on
Exploitation of Mineral Resources in
the Area (ISBA/23/LTC/CRP.3*)
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Submitted to:

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Response to the International Seabed Authority on the draft regulations contained in “ISBA/23/LTC/CRP.3*: Draft Regulations on Exploitation of Mineral Resources in the Area” made publicly available on 8 August 2017

Introduction

Ocean Mineral Singapore Pte. Ltd. (OMS) is a Singapore sponsored Contractor with exclusive rights for the prospecting and exploration of Polymetallic nodules within a reserved area in the eastern part in the Clarion Clipperton Zone (CCZ) when it entered into a 15-year exploration contract with the International Seabed Authority (ISA) in January 2015.

OMS remains committed towards the development of responsible deep-sea mining practices whilst ensuring striking a balance between economic development and environmental protection through the development of an Exploitation Code. OMS has been transparent in the sharing of its views and comments thus far and welcomes this opportunity to provide these comments on the latest version of the draft exploitation regulations. As such, we welcome the Authority to make these comments publicly available and to treat them as non-confidential. OMS looks forward to continuing to participate in the development of the ISA's exploitation regulatory regime.

Comments on the draft exploitation regulations:

OMS welcomes the latest development of the exploitation regulations which represents a critical milestone towards the realisation of this nascent industry. OMS very much appreciates and commends the Secretariat in its effort for a single consolidated version of the draft exploitation regulations critical to providing certainty, stability and predictability for contractors and its investors and look forward to continued contribution, participation and collaboration at the various technical workshops and seminars towards the expeditious development of a balanced Exploitation Code. OMS believe that the latest draft regulations represents a constructive step towards providing contractors with greater confidence and clarity whilst paving a pathway towards responsible exploitation of resources in the Area.

With reference to the note by the Secretariat set forth in ISBA/23/C/12, OMS, sees fitting that comments at this stage be more general and constructive in nature and will refrain from a regulation-by-regulation analysis or redrafting of regulatory language unless deemed necessary to ensure consistency and clarity. OMS also notes that Part VII set forth in the latest draft regulations, relating to financial terms, specifically concerning a payment mechanism and royalty liability remain a work in progress and will thus save related comments until further clarity on the financial related provisions are made available.

General Comments:

1. In general OMS is pleased to note that the latest version of the Draft Regulations represents a single, consolidated set of regulations which lends coherence to the regulatory framework, making clear what is expected of applicants and contractors. However, OMS notes that some material from the Discussion Paper on the development of the environmental regulations issued by the Secretariat in January 2017 as well as the financial payment mechanism and financial terms prepared following the previous financial workshops may not have been incorporated into the current consolidated regulations. As such, OMS looks forward to the

- inclusion and further development of the environmental and financial regulations through the on-going inter-sessional work in the form of workshops and working groups.
2. OMS looks forward to the inclusion of the financial and environmental provisions necessary to ensure a balance between economic development and environmental provisions and as to how these other building blocks will fit into the exploitation code. OMS continues to offer its support for, and contributions to, upcoming technical seminars and workshops and would like to reiterate the importance and underpinning urgency in revising the roadmap as it would be useful to see how these other building blocks will fit into the timeline of progression from exploration into that of exploitation.
 3. OMS is encouraged by the decision made by Assembly with regard to the revised meeting schedule of two Council meetings per year in line with the increased workload to be undertaken by the Council and fully supports the decision by the Authority to hold Council prior to the LTC. OMS wishes to extend its full support as the ISA transitions from managing the prospecting and exploration for minerals in the Area into finalising regulations for their exploitation.
 4. In light of the revised meeting schedule adopted by Assembly, we urge the ISA to reconsider the timeline of the code development roadmap to reflect this organisational change and to redefine key milestone targets to ensure time bound progress by Council's earlier deadline. In addition to predictability, stability and transparency, timeliness of regulatory actions is a key element in a successful regulatory framework.
 5. OMS would like to underscore the importance and urgency of the development of a working exploitation code and to fully make use of the Council's time, we would like to encourage the Secretariat to circulate discussion material relating to the code development at the earliest possible instance. It is crucial that adequate time prior to Council meetings be provided to allow for substantive consideration and discussion. This would thus allow for a more dynamic, interactive exchange of views ensuring effective and efficient discussions during Council.
 6. As the financial related provisions, specifically concerning a payment mechanism and royalty liability remain a work in progress, OMS will save related comments until further clarity on the financial related provisions are made available. OMS encourages the Authority to fully consider the outcomes following the Payment Regime Workshop #3 held in Singapore and endorses the financial model shared with the LTC as they further explore a payment mechanism and the financial terms of the exploitation contracts.
 7. OMS continues to underscore the urgency of the timely development of a financial regime. Whilst taking into account the need for transparency and balance between economic development and environmental protection, a regulatory system needs to be ready earlier to provide certainty and transparency to investors and contractors in terms of economic feasibility of this nascent industry but also further towards the contribution to monetary benefit-sharing arrangements under the common heritage regime, and the costs associated with implementing require environmental safeguards.

Specific questions:

1. Role of sponsoring States:

OMS being an independent contractor will withhold further comments, at this stage, regarding the obligations to be undertaken by the sponsoring state. OMS will continue to engage and cooperate with the sponsoring state to ensure alignment between contractor and sponsoring state.

2. Contract area:

OMS notes that there is uncertainty as to the definition and purpose of a “contract area” and would thus stress that the objectives and scope for both “contract area” and “mining area” need to be clearly defined. Acknowledging the amount of fixed fee payable by contractors to be proportional to the size of a “contract area”, we urge the Authority to set clear precedent on the obligations under the exploitation “contract area”.

3. Plan of work:

OMS notes that there remains ambiguity over the purpose and obligations under an exploitation “plan of work” and urges the Authority to set clear definitions to provide clarity and transparency. OMS would also like to emphasise that the exploitation “plan of work” be specific to that of the “mining area” however, would encourage that the Authority consider the need for a mechanism to allow parallel works be done within the “contract area” unrelated to mining work, for example in the case of the use and testing of more advance environmental surveying and monitoring technology as they become available. OMS would like to further reiterate the necessity for the Authority to clearly define the objective and scope of both “contract area” and “mining area”.

OMS would also like to stress that the Authority remains cautious and consistent to the use of ‘resource’ and ‘reserves’ to avoid confusion and ambiguity. OMS is of the view that the prerequisite of producing a ‘proven and probable ore reserves’ as part of a pre-feasibility study to be too onerous on contractors prior to the approval of an Exploitation Contract and should consider this to be revised to a later stage. We also note that no further commentary or text has been produced under the ‘feasibility study’ provisions and encourage the ISA to develop these provisions in parallel to those required under Annex II. This would provide greater visibility and transparency on the entire approval and application process and aid in the proper financial planning of contractors and potential applicants moving towards exploitation.

4. Confidential information

OMS would like to commend the work of the Authority in developing a new data management system that is aimed to be implemented in 2018. However, OMS would like to highlight the need to protect the integrity of the collected data. OMS is of the opinion that confidential information should not be limited to that of commercial sensitive data but to also include any and all data/information/samples that can derive/produce commercially sensitive data. We also encourage the Authority to further develop the strategic plan and proposed protocol with regards to the safeguarding and handling of confidential and commercially sensitive information and to include the type of data that can be accessed by specific persons within, but not limited to, the Authority and any third parties involved. We urge the Authority to provide transparency and accountability on the safeguarding and monitoring of confidential information and data as part of their new data management system.

5. Administrative review mechanism:

OMS urges the Authority to consider the possibility of a stepped process or an administrative review mechanism to be an appropriate means to address particular categories of dispute first without having to turn to the Seabed Dispute Chambers to ensure the speed and predictability of dispute resolutions.

6. Exploitation contract as security:

While OMS welcomes draft regulation 15 that allows for the exploitation contract to be used as security, there still remains a number of issues that will need to be further considered by the Authority in particular towards ensuring transparency and fairness. OMS also notes that the relationship between that of contractor and sponsoring state remains to be further developed and OMS will continue to engage and cooperate with its sponsoring state to ensure alignment.

7. Interested persons and public comment:

In the interest of transparency, OMS remains open towards the use of “stakeholder” as a broader, more general term that encompasses any and all parties involved/impacted by deep-sea mining. OMS is prepared to make specific contents relating to environmental protection and conservation efforts within our plans of works publicly available for comments. However, OMS heeds with caution on how the authority intends to streamline its work with regards towards the credibility and the weight of the comments and feedback provided by the public and its impact towards progressing this nascent industry. It is important for OMS and contractors alike to hold security that each claim made be considered with credibility and integrity.

Other Matters:

With reference to Draft Regulation 9: Performance Guarantee, OMS encourages the Authority to consider further defining the purpose and objectives with regards to the setting of a ‘Performance Guarantee’ as well as the stipulated contractor obligations for ‘compliance’. It would also be prudent for the Authority to address issues regarding the monitoring and auditing of such performance guarantees ensuring transparency and visibility.

OMS acknowledges that the definition of specific terms at this point need to be further developed as understanding and knowledge becomes available and as such the use of specific terms identified in the draft as requiring a definition should be added and identified as placeholders until their definitions are developed. It is critical that the authority place priority on providing clarity and ensuring consistency throughout, in particular to terms, but not limited to, such as ‘commercial production’, ‘suitable qualified person’, ‘performance guarantee’, ‘serious harm’ and ‘consortium’ should be provided at earliest available for all stakeholders to be able to value in full the draft regulations proposed.

OMS remains fully aware of the complexities encumbering the development of a fair and balanced exploitation code in accordance with the provisions set forth under UNCLOS and appreciates the expeditious efforts of the ISA towards the development of a workable exploitation regime. We look forward to further contributing towards the development of a sustainable and transparent exploitation regime for the benefit of mankind as a whole.