

# **SINGAPORE'S COMMENTS ON THE DRAFT EXPLOITATION REGULATIONS OF THE INTERNATIONAL SEABED AUTHORITY**

## **General observations**

1 The Authority should ensure that the draft regulations are reasonable, clear in their scope and consistent with what is provided in the provisions of the United Nations Convention on the Law of the Sea (UNCLOS), the Agreement relating to the implementation of Part XI of UNCLOS and the Seabed Disputes Chamber's Advisory Opinion on the Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the Area. To this end, we have highlighted a number of provisions below that may benefit from further consideration.

## **Draft regulation 3 (Duty to cooperate and exchange of information)**

2 On the exchange of information and data in Draft regulation 3, details on the cooperation processes and the work allocation between contractors, sponsoring States and the Authority can be worked out in guidelines to be developed subsequent to the finalisation of the regulation. Such guidelines can also set out details on the nature/type of information and data to be exchanged.

## **Draft regulation 22 (Termination of sponsorship)**

3 Draft regulation 22(2) provides for a minimum 12-month notice period for termination of sponsorship. The length of this notice period may be too long, especially in cases where the termination is due to a contractor's non-compliance, keeping in mind that the sponsoring State remains liable up to the point of termination. The Authority should consider shortening the minimum notice period to a reasonable length.

## **Draft regulation 23 (Use of exploitation contract as security)**

4 Draft regulation 23(1) requires that the prior consent of the sponsoring State be sought before a contractor may use its exploitation contract as security. The Authority should consider whether such prior consent is necessary or appropriate given that the raising of finance is essentially a commercial activity/decision. The Authority should also consider and clarify

what linkage, if any, there is between the requirement of a sponsoring State's consent and the requirement in paragraph 4(b) of draft regulation 23 – that the Council may require that the beneficiary of the encumbrance be properly regulated through a national financial conduct authority in accordance with the Guidelines. It is unclear whether draft regulation 23(4) refers to the consent of both the Council and the sponsoring State, or the consent of the Council only. If Draft regulation 23(4) relates also to the consent of the sponsoring State, the Authority should take into account the fact that the sponsoring State may not be in a position to ensure that the requirements are met in cases where the beneficiary is regulated by another State.

#### **Draft regulation 24 (Transfer of rights and obligations)**

5 Draft regulation 24 requires the prior consent of the Council before a contractor may transfer its rights and obligations under an exploitation contract. While we fully understand and support the requirement for consent by the Council, the Authority should consider the practical implications of this requirement, bearing in mind that the Council and the Commission only meet once or twice a year. One such implication is that a transfer could take more than a year to effect.

#### **Draft regulation 27 (Environmental Performance Guarantee)**

#### **Draft regulation 38 (Insurance)**

6 The Authority should ensure that the draft regulations provide for a level-playing field among all contractors (States, State enterprises, private contractors) so that no contractor or group of contractors is either prejudiced or advantaged by any provision of the Regulations. In this regard, conditions and requirements such as those pertaining to Environmental Performance Guarantee in Draft regulation 27 and those pertaining to insurance in Draft regulation 38 should take into account and be in line with the relevant industry practice such that service providers like insurers will be prepared to enter the market and offer such products and services at competitive prices. Otherwise access to such products and services could be a significant cost barrier to private contractors as the prices for those products and services may not be commercially viable.

#### **Draft regulation 39 (Training Plan)**

7 Draft regulation 39, paragraph 2 contemplates a role for the sponsoring State as regards the revision and development of an approved Training Plan. Clarity is required concerning the sponsoring State's precise role as regards the Training Plan. Further, explanation is also required as to why the sponsoring State's agreement would be required to revise or develop the approved Training Plan given that the approved Training Plan would be part of the exploitation contract between the contractor and the Authority to which the sponsoring State is not a party.

### **Draft regulation 46 (General obligations)**

8 On Draft regulation 46, it is important to avoid duplication of work by the various players mentioned therein. In this regard, a matrix of responsibilities may be useful to map out the various relationships. However, the matrix should not set out how the responsibilities should be carried out. The reason is that each sponsoring state has to take into account its national system, including its legislative framework. The purpose of the matrix would be to clarify the relevant responsibilities and timeframes within which those responsibilities must be undertaken. Such a matrix of responsibilities would enable the identification of gaps or duplication and go a long way in ensuring that such gaps will be covered, and duplication of efforts avoided. However, we do not consider that the matrix necessarily needs to be incorporated into the regulations.

9 In addition, on draft Regulation 46, paragraph (e), consideration should be given to whether State measures to enhance environmental performance of contractors may have the unintended effect of introducing unfair competition among contractors and if so whether/how sponsoring States should be limited in their ability to incentivise such performance.

### **Draft regulation 53 (Purpose of the Fund)**

10 On the main purposes of the Environmental Liability Trust Fund, the Authority should consider limiting the scope of the purposes of the Trust Fund to that reflected in paragraph (a) of Draft regulation 53. Article 235(3) of UNCLOS refers to the possibility of a "compensation fund", with the objective of "assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment". This possibility was also referred to by the Seabed Disputes Chamber in its Advisory Opinion on the

Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the Area, where it suggested that the Authority may wish to consider the establishment of a trust fund “to compensate for the damage not covered”. While the other four purposes in Draft regulation 53 are important ones, the question is whether including these purposes would result in the depletion or utilisation of the Trust Fund in a way that may compromise its ability to compensate for damage. As such, the fund should be limited in its purpose to that reflected in paragraph (a) of Draft regulation 53.

#### **Draft regulation 54 (Funding)**

11 On Draft regulation 54, paragraphs (a) – (c), clarity is required as to how the “prescribed percentage” would be arrived at – who would be responsible for prescribing the relevant figure?

#### **Draft regulation 56 (Review of activities under a Plan of Work)**

12 On Draft regulation 56, the Authority may wish to consider the extent of the sponsoring States’ participation in the review of activities under a Plan of Work, as well as whether the participation of the sponsoring State(s) is wholly dependent on the invitation of the Secretary-General or the contractor, or if it can be self-initiated.