

Further explanation and suggestions on the structuring of mining companies in relation to Equalization Measure

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1. Basic principles

(1) Under the 1994 《Implementation Agreement》, The payment system should not be complicated and should not impose major administrative costs on the ISA or on a contractor, contractors have the right to choose the payment system applicable to their exploitation contracts.

(2) The core assets that the ISA owns and has the right to manage are the raw (nodule) ores deposited in the international seabed. The principle of "whoever removes (nodule) ore pays" should be followed in the international seabed, and the most reasonable and legitimate way for the ISA to obtain revenue is through royalties, i.e., payments based on the quantity of (nodule) ore removed, without regard to the "profits" of the mining companies.

(3) The most reasonable point of valuation for the revenue of the mining (nodule ore) company subject to the exploitation contract is the point of trans-shipment of the raw (nodule) ore in the international seabed area, where ISA charges a fee (or payment by mining company) based on the raw nodule ore. Since the international seabed area is under the administration of ISA, the most reasonable point at which the mining company's operations should end in the international seabed area is at the point of trans-shipment of the nodule ore. The operations of the mining company should not involve the smelting and processing of nodule ores, because pollution from smelting and processing should not be generated in the international seabed area, the smelting and processing of nodule ores should be carried out by other companies managed by the jurisdictional country, and the ISA should not charge from the downstream metal product end of a smelting company that is under the management of the jurisdictional country.

2. Further explanation and suggestions on the structuring of mining companies in relation to Equalization Measure

(1) Due to the need for equalization measures, we have to face the issue of accurately evaluating the profits of mining (nodule ore) companies. If a mining company is a group company that includes multiple subsidiaries from different jurisdictional countries and involves multiple businesses such as collecting and smelting, accurately evaluating the profits of this group company and implementing equalization measures will require significant financial management costs. For example, it is necessary to adopt the OECD's GloBE Rules for Equalization measures.

(2) If, when applying for an exploitation contract, the ISA stipulates that a single, pure collector company must be registered (or established) in the sponsoring country corresponding to the exploitation contract, the profit of the collector company can be accurately assessed and equalization measures implemented, and the cost of financial management can be greatly reduced. The financial supervision of mining companies by the ISA would be facilitated.

The financial statements of this single collector company can only record accounts related to mining operations, but not operations unrelated to mining activities. It is emphasized here that it is a single, pure collector company because, as already discussed, the metallurgical process of nodule ore should not be included in the business activities of a collector company. The main activity of the single collector company is "collecting and selling nodule ores".

In terms of company structure, the single collector company may be a head office, which may have several subsidiaries (branches) registered in the sponsoring country in connection with the mining activities. For example, the mining activities of the branches may be "exploration", "environmental monitoring", "ore transportation", but the financial records of the branches should all be consolidated in the head office.

The single collector company of the sponsoring country may also have business activities related to the mining operation, such as exploration, environmental monitoring, and ore transportation, performed by exploration, environmental monitoring, and shipping companies in other jurisdictional countries. This sponsoring country-controlled single collector company usually uses tenders and bids for the procurement of services (which is the common international method) to carry out the exploration, environmental monitoring and ore transportation operations. These three operations may belong to three different jurisdictional countries, but all of them are financially linked to the sponsoring country's single collector company at the "winning price". We are accounting for the financial data from the perspective of the sponsoring country's single collector company. From the financial report of the sponsoring country's single collector company, the costs of the three operations, exploration, environmental monitoring and ore transportation from other jurisdictional countries are all attributed to the "costs", and the "cost" amounts for these three operations are the three "Bid winning prices". We are looking at it from the perspective of a single collector in the sponsoring country, where only the sale of raw nodule ore (or mineral products) by a single collector company can generate "revenue" (or positive cash flow), and the rest are "costs" (or negative cash flow). This makes sense from the point of view of the sponsoring country's single collector company, as "exploration", "environmental monitoring" and "ore transportation" can not generate a "profit", but from the financial point of view of the jurisdictional country to which "exploration", "environmental monitoring" and "ore transportation" belong, these three operations are "profitable". However, from the financial point of view of the jurisdictions to which "exploration", "environmental monitoring" and "ore transportation" belong, these three operations can include "profit", otherwise these three companies from different jurisdictions would not have "bid". However, from the point of view of the financial statements of the sponsoring country's single collector

company, there is no need to take into account whether or not the operations subcontracted to other jurisdictional country generate "profits". From the point of view of the equalization measure, the single collector company of the sponsoring country need only be concerned with whether it pays the "25 %" corporate income tax (CIT) to the sponsoring country. The single collector company's method of calculating corporate income tax does not require data on "profits" subcontracted to other jurisdictional countries. The OECD GloBE methodology is not required for the calculation of corporate income tax for a single collector company of the sponsoring country.

(3) If only a single, pure collector company is established in the sponsoring country, the ISA's regulation of equalization measures for the single collector company would be greatly simplified by first looking at the sponsoring country's fiscal policy, and if the sponsoring country's required corporate income tax (CIT) is less than 25%, then equalization measures are required by ISA, and then secondly checking the single collector company 's financial statements for the combined annual period, and if the corporate income tax is less than 25%, then equalization measures are required by ISA, then the top-up portion of profit is paid to the ISA to achieve the equalization measure.

For example, in Kris' earlier PPT "Intersessional Workshop Hosted by Australia & South Africa, 23 May 2023; INTER-SESSIONAL DISCUSSION ON ISA PAYMENT REGIME:EQUALIZATION MEASURE; TOP-UP PROFIT SHARE BASED ON GLOBE RULES -UPDATED CONTRACTOR PROPOSAL" in WORKED EXAMPLE (1/3) (PPT page 12):

In this case, "ISA Contractor" can be transformed, in my opinion, into "a single mining collector company belonging to the sponsoring country". The rest of the parties are transformed into "service provider", "service provider" can be mining service providers of other jurisdictional countries, and the single collector mining company belonging to the sponsoring country through the procurement of service projects and tendering. The single collector belonging to the sponsoring state enters into financial relationships with other mining service providers through the procurement of service projects and tenders, whereby the prices of the winning bids of the other mining service providers are shown as "costs" in the financial statements of the single collector company in the sponsoring state, and the costs, revenues and profits of all the mining activities incurred by the single collector company are consolidated in a single financial statement. The annual financial statements of the single collector company of the sponsoring country will provide the financial data required for a equalization meature audit, such as "total profit", "taxes paid to the sponsoring country", and so on. It may not be necessary for a single collector company to conduct a special "equalization measure" audit. This would result in significant savings in financial management costs for a single collector company of the sponsoring country.