

19 January 2026

## **Treatment of the Enterprise in the Draft ISA Exploitation Regulations**

### **Interim Director-General of the Enterprise and the United Kingdom of Great Britain and Northern Ireland**

#### **Introduction and Executive Summary**

1. At the 30<sup>th</sup> Session of the International Seabed Authority (**ISA**) the Interim Director-General of the Enterprise proposed two alternative definitions of “Contractor” for consideration by the Council,<sup>1</sup> with a view to one being used in the draft regulations on exploitation of Mineral resources in the Area (the **Draft Regulations**).<sup>2</sup>
2. The Interim Director-General of the Enterprise and the United Kingdom of Great Britain and Northern Ireland have subsequently worked together on an analysis of the Draft Regulations:
  - a. to identify instances in the Draft Regulations where differential treatment for the Enterprise is required or may be appropriate; and
  - b. to consider what further work would be required in the event the Council uses either of the alternative definitions proposed by the Interim Director-General.
3. The Interim Director-General and the United Kingdom consider that the instances where differential treatment for the Enterprise is required or may be appropriate can be categorised as follows:
  - a. Regulations addressing the corporate structure and control of Contractors. As an organ of the Authority, the Enterprise will not have e.g. parent or subsidiary companies, beneficial owners or corporate principals in the same manner that other Contractors will.
  - b. Regulations addressing the Sponsoring State of Contractors. As an organ of the Authority, the Enterprise is exempted from this requirement under the United Nations Convention on the Law of the Sea (the **Convention**).
  - c. Regulations addressing Contractors participating in a joint venture with the Enterprise, as the Enterprise cannot participate in a joint venture with itself.
  - d. Regulations addressing requirements on Contractors to provide training and transfer of technology, where it is intended that the Enterprise would be a recipient rather than a provider of training and transfer of technology.

<sup>1</sup> Textual Proposal of the Interim Director-General of the Enterprise during the 30<sup>th</sup> Session of the ISA (Council Part II), available online at [Enterprise-Schedule.pdf](#)

<sup>2</sup> Dated 10 January 2025 and available online at [isa.org.jm/wp-content/uploads/2025/01/10012025-Revised-Consolidated-Text-2.pdf](#) Note, this paper was prepared before the release of the revised consolidated text on 23 December 2025.

19 January 2026

- e. Regulations contemplating proceedings against Contractors in national courts, if this is not intended in the case of the Enterprise, or at least not intended to the same extent as for other Contractors given the privileges and immunities accorded to the Enterprise.
- f. Regulations addressing royalty payments, where the Enterprise is to be excluded from the obligation to make royalty payments initially until it is self-supporting.

4. Of the two proposed definitions of “Contractor”, both propose to generally include the Enterprise. This is appropriate as the regime for the Enterprise intends for the Enterprise to be on equal footing to other Contractors. The difference between the two proposed definitions is in how they propose to disapply the general inclusion of the Enterprise within the definition of Contractor in the specific cases where differential treatment is required or appropriate. The first proposed definition would exclude the Enterprise only where it is expressly excluded in the Draft Regulations, while the second proposed definition would exclude the Enterprise where it has been excluded in light of the context and in accordance with the provisions and spirit of the Convention and the 1994 Agreement Relating to the Implementation of Part XI of UNCLOS (the **1994 Agreement**).

5. The intention is for the Draft Regulations to form a “Code” for future deep-sea mining. In that context, it is preferable if the language used can be understood, interpreted and applied with certainty, not least to provide clarity to the international, governmental and commercial actors involved. To that end, there may be particular merit to the first proposed definition i.e. the exclusion of the Enterprise only where expressly identified as excluded by the text of the Draft Regulations. The Interim Director-General and the United Kingdom have assessed that the first proposed definition would require the insertion of an express exclusion in at least 39 different regulations, 4 Annexes and 4 other definitions in the Draft Regulations.<sup>3</sup>

6. Application of the test contained in the alternative proposed definition (i.e. assessing the context and the “provisions and the spirit” of the Convention and the 1994 Agreement) should lead to the same result. However, the adoption of the alternative proposed definition demands an interpretative exercise to be undertaken for each of the over 800 instances in the Draft Regulations where the term “Contractor” is used. This may be considered undesirable in the context of a regulatory code designed to facilitate commercial mining operations in the Area. The second proposed definition would still allow the Draft Regulations to be conceptually coherent, but only

---

<sup>3</sup> Each has been identified in red text in the table accompanying this advice. The table also notes instances where explicit clarification would be desirable.

19 January 2026

after the reader has undertaken the necessary interpretative exercise to reach the same result.

7. The remainder of this paper is structured as follows:

- a. Overview of the regime of the Enterprise in Part XI of the Convention and the 1994 Agreement.
- b. The definitions of “Contractor” proposed by the Interim Director-General of the Enterprise
- c. The categories of regulations where differential treatment is required or appropriate.

### **Overview of the Convention and 1994 Agreement regime for the Enterprise**

8. Article 170(1) of the Convention provides:

*The Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly, pursuant to article 153, paragraph 2(a), as well as the transporting, processing and marketing of minerals recovered from the Area.<sup>4</sup>*

9. Annex IV of the Convention sets out the Statute of the Enterprise. Article 1(3) provides:

10. *In developing the resources of the Area pursuant to paragraph 1, the Enterprise shall, subject to this Convention, operate in accordance with sound commercial principles.*

11. However, the regime of the Enterprise (and the ISA more broadly) has been significantly amended by the 1994 Agreement.<sup>5</sup> Relevantly, Section 2(4) of the 1994 Agreement provides that:

12. ***The obligations applicable to contractors shall apply to the Enterprise.***

*Notwithstanding the provisions of article 153, paragraph 3, and Annex III, article 3, paragraph 5, of the Convention, a plan of work for the Enterprise upon its approval shall be in the form of a contract concluded between the Authority and the Enterprise.*

(Emphasis added)

---

<sup>4</sup> Identical provision is made in Annex IV, Article 1(1) of the Convention.

<sup>5</sup> The context preceding the 1994 Agreement and its full implications of the 1994 Agreement on the UNCLOS regime are set out in Churchill, Lowe and Sander *The Law of the Sea* (4<sup>th</sup> ed 2022), pp. 414-424.

19 January 2026

13. Section 2(6) of the 1994 Agreement confirms that “*Annex IV and other provisions of the Convention relating to the Enterprise shall be interpreted and applied in accordance*” with that Section 2 of the 1994 Agreement.

14. Therefore, the regime of the Enterprise must be understood as intending that, as far as possible, the Enterprise is to be treated in the same manner as other Contractors and “*stand on an equal footing*”.<sup>6</sup>

15. Section 2 of the 1994 Agreement also provides:

- a. Until the Enterprise begins to operate independently, the Secretariat of the Authority shall perform the functions of the Enterprise, overseen by an interim Director-General (Section 2(1)).
- b. The Enterprise shall conduct its initial deep seabed mining through joint ventures (Section 2(2)).

16. These latter two provisions mean that in practice many references to “Contractors” in the Draft Regulations will not be immediately relevant to the Enterprise. However, as the Draft Regulations are intended to operate as a deep-sea mining code into the future, this paper assesses also their future application to the Enterprise once it is operating independently.

### **Proposed Definitions of Contractor**

17. The Interim Director-General of the Enterprise’s textual proposals for the definition of “Contractor” in the Schedule of the Draft Regulation are as follows, where the bold and underlined text are the alternative methods for introducing differential treatment of the Enterprise:

*Alt. 1 “Contractor” means any party to an Exploitation Contract (other than the Authority) in accordance with Part III of these Regulations and, where the context applies, shall include its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the Exploitation Contract. Except where expressly excluded in these Regulations, the term “Contractor” shall also include the Enterprise.*

*Alt. 2 “Contractor” means any party to an Exploitation Contract (other than the Authority) in accordance with Part III of these Regulations and, where the context applies, shall include its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the Exploitation Contract. The term “Contractor” shall also include the Enterprise, except where excluded in light of the context and in*

---

<sup>6</sup> See Churchill, Lowe and Sander, p. 438.

19 January 2026

**accordance with the provisions and the spirit of the Convention and the Agreement.**

18. Both proposals therefore generally *include* the Enterprise where the term “Contractor” is used. They differ in the approach they adopt to excluding the Enterprise in specific instances. The first proposed definition relies on express exclusion in the Draft Regulations, while the second proposed definition looks to the context of the Draft Regulations, and the “*provisions and the spirit*” of the Convention and the 1994 Agreement.
19. The rationale given by the Interim Director-General for these proposals is as follows:

*The current definition of “Contractor” intends to encompass the Enterprise as well as contractors. It is necessary to assess whether this wording is the most suitable and whether it necessitates amendments to some Regulations. There are some uses of “Contractor” in the Regulations that do not intend to include the Enterprise. As a starting point, it can therefore be said that the current wording of the DRs always includes the Enterprise in the current definition of contractor; however, we want to avoid this outcome. To avoid two options have been presented above for consideration of the Council.*

20. In line with the regime for the Enterprise, where it is to be treated generally in the same manner as other Contractors, it is appropriate for the definition of Contractor to include the Enterprise generally. In broad terms, the regime intends for the Enterprise to operate commercially, and it is therefore appropriate to include it in the definition of Contractor for obligations relating to applications, reporting, financing and payments.<sup>7</sup> In addition, it is also appropriate that the Enterprise is subject to the same environmental, compliance and safety obligations that other Contractors are subject to, not least because of the general requirement to ensure effective protection for the marine environment in the Area.<sup>8</sup>
21. The Interim Director-General states that there are some uses of “Contractor” in the Draft Regulations that do not intend to include the Enterprise. Each of these have been identified in the table accompanying this paper. The following section of this paper sets out each category where differential treatment is either required or appropriate.

---

<sup>7</sup> Noting that under Annex IV, Article 10(3) of the Convention the Enterprise is to be exempted from payments to the Authority for an initial period required for it to become self-supporting (not exceeding 10 years).

<sup>8</sup> See, e.g. Convention Art 145.

19 January 2026

## Categories of Regulations for Differential Treatment

### *Corporate Structure and Control of Contractors*

22. There are a number of provisions which address the corporate characteristics of Contractors that are inapposite to apply to the Enterprise, as an organ of the Authority.

23. For example, the concept of a “Parent Company Liability Statement” has been introduced to ensure that parent companies of Contractors are jointly and severally liable to the Authority for damage caused by a Contractor.<sup>9</sup> While appropriate for other Contractors, they cannot be applied to the Enterprise which will lack a parent company.

24. The same goes for references to a Contractor’s “Managing Company”.<sup>10</sup> Although this term is not currently defined in the Draft Regulations, it is again one that cannot apply to the Enterprise as an organ of the Authority.

25. In this same category of regulations are those referring to a “Change of Control” of a Contractor, or a Contractor’s beneficial ownership.<sup>11</sup> The Enterprise will not be amenable to the same changes in corporate structure and ownership that other Contractors may be.

### *Sponsoring State*

26. By Article 153(2) and Article 4 of Annex III of the Convention, the Enterprise is carved out from the requirement to have a Sponsoring State. Unlike other Contractors, the Enterprise does not have a nationality as an organ of the Authority.

27. As a result, each instance in the Draft Regulations that addresses a Contractor’s Sponsoring State, or sponsorship generally, requires differential treatment for the Enterprise. If it is desired that the Authority would play an analogous role for the Enterprise that Sponsoring States will for other Contractors (e.g. being notified in relation to certain activities by Contractors) this would require specific drafting to achieve this. In any event, the Enterprise requires differential treatment, as it will not be subject to national law ensuring it complies with its obligations under the Draft Regulations.

### *Joint Ventures*

---

<sup>9</sup> See Draft Regulations reg. 18bis and 24, Annex XI.

<sup>10</sup> See Draft Regulations reg. 18bis and 24, Annex XI.

<sup>11</sup> See Draft Regulations reg. 24, 83bis, 89 and 92. Annex XI

19 January 2026

28. While it is clearly intended that the Enterprise will engage in joint ventures with other Contractors,<sup>12</sup> the references to these joint arrangements require differential treatment for the Enterprise to other Contractors.<sup>13</sup> A joint venture can only occur between other Contractors and the Enterprise, as the Enterprise cannot be in a joint venture with itself.

*Training and Transfer of Technology Obligations*

29. The Convention regime, as amended by the 1994 Agreement provides for the Enterprise to acquire technology from other Contractors or their Sponsoring States on fair and reasonable commercial terms, and obliges States Parties to develop training, technical assistance and scientific cooperation programmes.<sup>14</sup>

30. Although not required for the Draft Regulations to be internally coherent, this context suggests that it is not intended for the Enterprise to be subject of training and transfer of technology obligations.<sup>15</sup> If that is the case, and these obligations are intended only to apply to other Contractors, differential treatment is required for these regulations. This would allow for the Enterprise to be a recipient, rather than provider of such training and transfer of technology.

*Immunity in National Courts*

31. Annex IV, Article 13(3) of the Convention grants the Enterprise general immunity from national proceedings, save for the exceptions there outlined, which include where it operates, has entered a contract, or has otherwise engaged in commercial activity, in that State. In this respect, it is distinct from other Contractors which are not granted such immunity from national proceedings by the Convention.

32. The Draft Regulations do not expressly address the immunity of the Enterprise, but certain regulations do refer generally to compensation claimed against a Contractor in “*national proceedings*”<sup>16</sup> or “*legal actions against the Contractor*”<sup>17</sup>. To avoid any suggestion that these regulations detract from the immunity granted to the Enterprise, differential treatment of the Enterprise is appropriate here.

---

<sup>12</sup> Initially, this is the only manner in which it is to conduct deep seabed mining operations: 1994 Agreement Section 2(2).

<sup>13</sup> See Draft Regulations reg 19.

<sup>14</sup> 1994 Agreement Section 5(1)(c).

<sup>15</sup> See Draft Regulations regs 3(f)(vi), 37 and 37 bis.

<sup>16</sup> Draft Regulations reg 4(7).

<sup>17</sup> Draft Regulations reg 20(5). See also reg 40 which refers to a Contractor being subject to national anti-bribery and anti-corruption law.

19 January 2026

### *Royalty Payments*

33. While the Enterprise will eventually make royalty payments on the same terms as other Contractors, Article 10(3) of Annex IV to the Convention provides that during an initial period before the Enterprise is self-supporting, it shall be exempted from royalty payments. As such differential treatment to other Contractors is required in the regulations addressing royalty payments, to provide for this initial exemption to apply only to the Enterprise.<sup>18</sup>

### *No Differential Treatment Required for Liability and Financial Penalties:*

34. The regime of the Enterprise does not evidence an intention to exempt the Enterprise from liability for harm caused.<sup>19</sup> As for financial penalties, the Draft Regulations expressly provide for penalties to be paid by the Enterprise.<sup>20</sup> This is consistent with the general principle that the Enterprise is to be on equal footing with other Contractors, and therefore subject to the same compliance mechanisms, liability and penalties.

---

<sup>18</sup> Draft Regulations reg 64.

<sup>19</sup> See e.g. Draft Regulations reg 4(7).

<sup>20</sup> Draft Regulations reg 56(1)(b).