

## BRIEFING NOTE AND REVISED PROPOSAL ON MONOPOLIZATION

### Submitted by Trinidad and Tobago as Friend of the President

The proposal set out in the Annex to the present document follows the first intersessional meeting held on 6 May 2026, and the feedback received to the [first proposal](#) submitted on 27 April (to which reference is made for further context).

Based on the feedback received from participants, it appears that there is a common understanding that:

- The provisions of Article 6, paragraphs 3(c) and 4 of Annex III to the Convention only apply to polymetallic nodules. As such, they cannot be used to determine what constitutes a case of monopolization for all resource categories.
- Moreover, while the provisions of Article 6(3)(c) of Annex III can be used as a useful basis to determine cases of monopolization, the language of paragraph 4 makes clear that they cannot be used as a definition of monopolization.
- Monopolization should be prevented in the phase of consideration and approval of the plan of work, and the relevant requirements should be applicable in cases where a change of control or nationality of the applicant occurs.

The present proposal therefore wishes to focus on the following two points.

#### **The reference to monopolization in draft regulation 15**

The previous wording of paragraph 2(e) of draft regulation 15 (reflecting the language of Article 6, paragraphs 3(c) and 4 of Annex III to the Convention) has been deleted, as there seemed to be no support for it. The current language is similar to the original language of paragraph 3(a) of draft regulation 15.

Based on the proposals received, the paragraph still makes reference to Article 6 of Annex III to the Convention. It is proposed to add the phrase “where applicable”, to make clear that this provision would only apply to polymetallic nodules. It is suggested that, if the Council agrees that the draft Regulations should only apply to polymetallic nodules, this phrase might be deleted. However, that issue is not covered by the present group. Comments on this aspect are welcome.

A reference to Standards and Guidelines has also been added, based on the suggestions of some participants. The relevant requirements to avoid monopolization will therefore be set out in those legal instruments.

Comments are welcome on the two alternative references to “a State Party [Alt.1 or entities sponsored by it] [Alt.2 submitting or sponsoring the concerned Plan of Work]”. The first alternative reflects the language of previous paragraph 3(a) of draft regulation 15, while the second one has been proposed to align with the language of Article 6(3)(c) of Annex III to the Convention.

Furthermore, an alternative language has been introduced based on the proposal of a participant. It is noted that this alternative language would only apply to polymetallic nodules. Also in this case, a reference to the Standards and Guidelines has been included, in order to clarify where the criteria to be applied by the Commission in determining whether a specific situation amounts to monopolization would be set out. Participants are encouraged to express a preference on the two proposed alternatives.

#### **The reference to the Economic Planning Commission (EPC) in draft regulation 107**

The reference to the EPC in draft regulation 107 was originally introduced on the assumption that the definition of monopolization would be retained within the Exploitation Regulations. If such definition is moved to the Standards and Guidelines, it is suggested that the EPC would no longer have a role in proposing amendments to the Regulations in order to propose a different definition of monopolization. However, it is acknowledged that some participants supported an explicit reference to the EPC in this context.

Please note that a dedicated Friends of the President (FoP) group has been now established to consider DR 107, “Review of these Regulations”, facilitated by the delegation of Belgium. In light of this development, it may be appropriate for the relevant aspects concerning the EPC’s role to be addressed within the framework of that FoP’s discussions.

If the current language of paragraph 2(e) is retained, it is suggested that the Friend of the President of the present group might get in contact with the delegation of Belgium, in its capacity as facilitator of the Friend of the President group on DR 107, in order to convey that certain delegations have specifically requested the retention of a reference to the EPC in paragraph 2 of DR 107. This would help ensure coherence and consistency across the related negotiating tracks.

## **Other issues**

Two further issues were addressed in the previous proposal, and have not been amended in the present one. The first is the treatment of monopolization in cases of change of control or of nationality of the contractor. As mentioned above, there was no disagreement on this reference, which has therefore been retained.

The second issue is the deletion of the current definition of “Monopolize” in the Schedule. Participants seemed comfortable with the deletion, as the rationale behind this definition is unclear.

## Annex

### Regulation 15

#### Commission's recommendation for the approval or disapproval of a Plan of Work

[...].

2. The Commission shall not recommend approval of a proposed Plan of Work if:

[...]

~~[(e) such approval would permit a State Party [Alt.1 or entities sponsored by it] [Alt.2 submitting or sponsoring the concerned Plan of Work] to monopolize the conduct of activities in the Area or preclude other States Parties from activities in the Area, in accordance with Article 6, paragraphs 3(c) and 4 of Annex III to the Convention [ (where applicable), the applicable Standards and taking into account Guidelines].]~~

~~[(e)Alt. [it would contravene article 6(3)(i) or (ii) of Annex III to the Convention, and the Authority has not, in accordance with article 6(4) [the applicable Standards and taking into account Guidelines], determined] that such approval would not permit a State Party or entities sponsored by it to monopolize the conduct of activities in the Area or to preclude other States Parties from activities in the Area.]~~

3. The Commission shall not recommend the approval of a proposed Plan of Work if it determines that:

~~(a) sSuch approval would permit a State party or entities sponsored by it to Monopolize the conduct of activities in the Area with regard to the Resource category in the proposed Plan of Work in accordance with applicable Standards, taking into account the Guidelines [or significantly control the production of a single Mineral or Metal produced globally]; or~~

### Regulation 24

#### Change of Control

[...]

1.bis Where there is a proposed Change of Control of a Contractor, regulation 15, paragraph 2(e), regulation 21, paragraph 1, regulation 21, paragraph 3, regulation 21, paragraph 3.bis, regulation 21, paragraph 4 and regulation 21, paragraph 7 shall apply *mutatis mutandis* and the Contractor shall have the appropriate sponsorship in place prior to the Change of Control. Failure to have the appropriate sponsorship in place results in the automatic termination of the Exploitation Contract upon the Change of Control, unless a State Party or States Parties have submitted a certificate or certificates of sponsorship and the Commission or Council, as applicable, is still reviewing whether the Contractor has the appropriate sponsorship.

### Regulation 24 bis

#### Change of Nationality

[...]

2. Where there is a proposed Change of Nationality of a Contractor or a Controlling National, the State Party or States Parties, as applicable, that become the new State of nationality of the Contractor or the Controlling National shall submit a certificate or certificates of sponsorship in accordance with regulation 6 as if the Contractor

were an Applicant. Regulation 15, paragraph 2(e), rRegulation 21, paragraph 1, regulation 21, paragraph 3, regulation 21, paragraph 3.bis, regulation 21, paragraph 4 and regulation 21, paragraph 7 shall apply mutatis mutandis to this situation.

## **Regulation 107**

### **Review of these Regulations**

[...]

2. [When in the light of improved knowledge, technological advancements, implementation experience or identification of regulatory gaps, it becomes evident that these Regulations are not adequate, a]ny State party, the Commission, the Economic Planning Commission, the Enterprise, any Contractor (through its Sponsoring State), or Stakeholder (through a State party) may [following the completion of the first review] [request]/[suggest] the Council to consider, at its next ordinary session, revisions to these Regulations and the matter shall be included in the provisional agenda of the Council for that session.

## **Schedule**

### **Use of terms and scope**

[ <del>“Monopolize”</del> ]	[ <del>means the ability to control over 75 per cent of the estimated annual volume of similar Mineral bearing ore exploited, produced or removed from the Area after Commercial Production has occurred in respect of at least 2 Exploitation Contracts.</del> ]
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