

Part VII **Financial terms of an exploitation contract**

Section 1 **General**

Regulation 62 **Equality of treatment**

The Council shall, based on the recommendations of the Commission, apply the provisions of this Part in a uniform and non-discriminatory manner, and shall ensure equality of financial treatment and comparable financial obligations for Contractors.

Regulation 63 **Incentives**

1. The Council may, taking into account the recommendations of the Commission, provide for incentives, including financial incentives, on a uniform and non-discriminatory basis, to Contractors to further the objectives set out in article 13 (1) of annex III to the Convention.

2. Furthermore, the Council may provide incentives, including financial incentives, to those Contractors entering into joint arrangements with the Enterprise under article 11 of annex III to the Convention, and developing States or their nationals, to stimulate the transfer of technology thereto and to train the personnel of the Authority and of developing States.

3. The Council shall ensure that, as a result of the incentives provided to Contractors under paragraphs 1 and 2 above, Contractors are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.

Section 2 **Liability for and determination of royalty**

Regulation 64 **Contractor shall pay royalty**

A Contractor, from the date of commencement of Commercial Production, shall pay a royalty in respect of the mineral-bearing ore sold or removed without sale from the Contract Area as determined in appendix IV to these regulations.

Regulation 65 **Secretary-General may issue Guidelines**

1. The Secretary-General may, from time to time, issue Guidelines in accordance with regulation 95 in respect of the administration and management of royalties prescribed in this Part.

2. The Secretary-General shall consider all requests for the clarification of any Guidelines issued under paragraph 1 above, or on any other matter connected with the administration and management of a royalty and its payment.

Section 3

Royalty returns and payment of royalty

Regulation 66

Form of royalty returns

A royalty return lodged with the Secretary-General shall be in the form prescribed by the Guidelines and signed by the Contractor's designated official.

Regulation 67

Royalty return period

A royalty return period for the purposes of this Part is a half-year return period, from:

- (a) 1 January to 30 June; and
- (b) 1 July to 31 December.

Regulation 68

Lodging of royalty returns

1. A Contractor shall lodge with the Secretary-General a royalty return for each Mining Area not later than 90 Days after the end of the royalty return period in which the date of commencement of Commercial Production occurs, and thereafter not later than 90 Days after the end of each subsequent royalty return period for the duration of the exploitation contract.
2. In connection with any joint venture arrangement or a consortium of Contractors, one royalty return shall be submitted by the joint venture or consortium.
3. A royalty return may be lodged electronically.

Regulation 69

Error or mistake in royalty return

A Contractor shall notify the Secretary-General promptly of any error in calculation or mistake of fact in connection with a royalty return or payment of a royalty.

Regulation 70

Payment of royalty shown by royalty return

1. A Contractor shall pay the royalty due for a royalty return period on the Day the royalty return is required to be lodged.
2. Payments to the Authority may be made in United States dollars or other foreign currency which is freely convertible.
3. All payments made to the Authority shall be made gross and shall be free of any deductions, transmission fees, levies or other charges.
4. The Council may approve the payment of any royalty due by way of instalment where special circumstances exist that justify payment by instalment.

Regulation 71

Information to be submitted

1. A royalty return shall include the following information for each royalty return period:

- (a) The quantity in wet metric tons of mineral-bearing ore recovered from each Mining Area;
- (b) The quantity and value by Mineral in wet metric tons of the mineral-bearing ore shipped from the Mining Area;
- (c) The value and the basis of the valuation of the mineral-bearing ore sold or removed without sale from the Mining Area, as verified by a suitably qualified person and supported by a representative chemical analysis of the ore by a certified laboratory;
- (d) Details of all contracts and sale or exchange agreements relating to the mineral-bearing ore sold or removed without sale from the Contract Area; and
- (e) A calculation of the royalty payable in accordance with section 3, including any adjustment made to the prior royalty return period and a declaration signed by a designated official of the Contractor that the royalty return is accurate and correct.

2. In respect of a final royalty return period ending on the date of expiry, surrender or termination of the exploitation contract, the Contractor shall provide:

- (a) A final calculation of the royalty payable;
- (b) Details of any refund or overpayment of royalty claimed; and
- (c) The quantity and value of all closing stocks of the mineral-bearing ore.

3. Within 90 Days from the end of a Calendar Year, the Contractor shall provide the Secretary-General and the sponsoring State or States with a statement from an auditor or certified independent accountant that the royalty calculation for that Calendar Year:

- (a) Is based on proper accounts and records properly kept and is in agreement with those accounts and records; and
- (b) Complies with these regulations and is accurate and correct.

Regulation 72
Authority may request additional information

The Secretary-General may, by notice to a Contractor who has lodged a royalty return, request the Contractor to provide, by the date stated in the notice, information to support the matters stated in the royalty return.

Regulation 73
Overpayment of royalty

1. Where a royalty return shows any overpayment of royalties, a Contractor may apply to the Secretary-General to request a refund of any such overpayment.
2. Where no such request is received by the Secretary-General within 90 Days of the due date of submission of the relevant royalty return, the Authority shall carry forward any overpayment and credit it against a future royalty amount payable under this Part.
3. Any request to reduce a royalty-related amount payable by a Contractor must be made within five years after the Day the relevant royalty return was lodged with the Authority.
4. Where any final royalty return shows an amount to be refunded, the Secretary-General shall refund such amount provided he or she determines that such refund is properly due. The Secretary-General may request, and the Contractor shall provide,

such additional information or confirmation, as he or she considers necessary to determine that such refund is correct and due to a Contractor.

Section 4

Records, inspection and audit

Regulation 74

Proper books and records to be kept

1. A Contractor shall keep and maintain, at a place agreed by the Contractor and the Secretary-General, complete and accurate records relating to the Minerals recovered in order to verify and support all returns or any other accounting or financial reports required by the Authority in relation to Exploitation.
2. The Contractor shall prepare such records in conformity with internationally accepted accounting principles that verify, in connection with each Mining Area, *inter alia*:
 - (a) Details of the quantity and grade of the Minerals recovered from each Mining Area;
 - (b) Details of sales, shipments, transfers, exchanges and other disposals of the Minerals from the Mining Area, including the time, destination, value and basis of valuation and the quantity and grade of each sale, shipment, transfer, exchange or other disposal;
 - (c) Details of all eligible capital expenditure and liabilities by category of expenditure and liability incurred in each Mining Area; and
 - (d) Details of all revenues and operating costs.
3. A Contractor shall supply and file such records at such times as may be required by the Authority under these regulations and within 60 Days of the receipt of any such request from the Secretary-General.
4. A Contractor shall maintain all records and make such records available for inspection and audit under regulation 75.

Regulation 75

Audit and inspection by the Authority

1. The Secretary-General may audit the Contractor's records.
2. Any such audit shall be undertaken at the Authority's sole cost and shall be performed by an Inspector in accordance with Part XI of these regulations.
3. An Inspector may, in connection with a liability for a royalty payment:
 - (a) Inspect the mining and on-board processing facility with a view to verifying the accuracy of the equipment measuring the quantity of Mineral ore sold or removed without sale from the Contract Area;
 - (b) Inspect, audit and examine any documents, papers, records and data available at the Contractor's offices or on-board any mining vessel or Installation;
 - (c) Require any duly authorized representative of the Contractor to answer any questions in connection with the inspection; and
 - (d) Make and retain copies or extracts of any documents or records relevant to the subject matter of the inspection and provide a Contractor with a list of such copies or extracts.

4. The Contractor shall make available to an Inspector such financial records and information contemplated as reasonably required by the Secretary-General to determine compliance with this Part.

5. Members of the Authority, in particular a sponsoring State or States, shall, to the best of their abilities, cooperate with and assist the Secretary-General and any Inspector in the carrying out of any audit under this regulation, and shall facilitate access to the records of a Contractor by an Inspector and assist in the exchange of information relevant to a Contractor's obligations under this Part.

Regulation 76

Assessment by the Authority

1. Where the Secretary-General determines, following any audit under this Part, or by otherwise becoming aware that any royalty return is not accurate and correct in accordance with this Part, the Secretary-General may, by written notice to a Contractor, request any additional information that the Secretary-General considers reasonable in the circumstances, including the report of an auditor.

2. A Contractor shall provide such information requested by the Secretary-General within 60 Days of the date of such request, together with any further information the Contractor requires the Secretary-General to take into consideration.

3. The Secretary-General may, within 60 Days of the expiry of the period prescribed in paragraph 2 above, and after giving due consideration to any information submitted under paragraph 2, make an assessment of any royalty liability that the Secretary-General considers ought to be levied in accordance with this Part.

4. The Secretary-General shall provide the Contractor with written notice of any proposed assessment under paragraph 3 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The Secretary-General shall consider such representations and shall confirm or revise the assessment made under paragraph 3 above.

5. The Contractor shall pay any such royalty liability within 30 Days of the date of the determination made by the Secretary-General under paragraph 4.

6. Except in cases of fraud or negligence, no assessment may be made under this regulation after the expiration of 6 years from the date on which the relevant royalty return is lodged.

Section 5

Anti-avoidance measures

Regulation 77

General anti-avoidance rule

1. Where the Secretary-General reasonably considers that a Contractor has entered into any scheme, arrangement or understanding or has undertaken any steps which, directly or indirectly:

(a) Result in the avoidance, postponement or reduction of a liability for payment of a royalty under this Part;

(b) Have not been carried out for bona fide commercial purposes; or

(c) Have been carried out solely or mainly for the purposes of avoiding, postponing or reducing a liability for payment of a royalty; then the Secretary-General shall determine the liability for a royalty as if the avoidance, postponement or

reduction of such liability had not been carried out by the Contractor and in accordance with this Part.

2. The Secretary-General shall provide the Contractor with written notice of any proposed determination under paragraph 1 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The Secretary-General shall consider such representations and shall determine the liability for a royalty for the original or revised amount.

3. The Contractor shall pay any such royalty liability within 30 Days of the date of the determination made by the Secretary-General under paragraph 2.

Regulation 78 Arm's-length adjustments

1. For the purposes of this regulation:

(a) "Arm's length", in relation to contracts and transactions, means contracts and transactions that are entered into freely and independently by parties that are not related parties; and

(b) "Arm's-length value", in relation to costs, prices and revenues, means the value that a willing buyer and willing seller, who are not related parties, would agree is fair under the circumstances.

2. Where, for the purposes of calculating any amounts due under this Part VII, any costs, prices and revenues have not been charged or determined on an arm's-length basis, pursuant to a contract or transaction between a Contractor and a related party, the Secretary-General may adjust the value of such costs, prices and revenues to reflect an arm's-length value in accordance with internationally accepted principles.

3. The Secretary-General shall provide the Contractor with written notice of any proposed adjustment under paragraph 2 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice.

Section 6 Interest and penalties

Regulation 79 Interest on unpaid royalty

Where any royalty or other amount levied under this Part remains unpaid after the date it becomes due and payable, a Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated by adding 5 per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable.

Regulation 80 Monetary penalties

Subject to regulation 103 (6), the Council may impose a monetary penalty in respect of a violation under this Part.

Section 7

Review of payment mechanism

Regulation 81

Review of system of payments

1. The system of payments adopted under these regulations and pursuant to paragraph 1 (c) of section 8 of the annex to the Agreement shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter as determined by the Council, taking into account the level of maturity and development of Exploitation activities in the Area.
2. The Council, based on the recommendations of the Commission, and in consultation with Contractors, may revise the system of payments in the light of changing circumstances and following any review under paragraph 1 above, save that any revision shall only apply to existing exploitation contracts by agreement between the Authority and the Contractor.

Regulation 82

Review of rates of payments

1. The rates of payments under an existing system of payments shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter as determined by the Council, taking into account the Resource category and the level of maturity and development of Exploitation activities in the Area.
2. The Council, based on the recommendations of the Commission and in consultation with Contractors, may adjust the rates of payments in the light of such recommendations and consultation, save that any adjustment to the rates of payments may only apply to existing exploitation contracts from the end of the Second Period of Commercial Production reflected in appendix IV to these regulations.
3. Without limiting the scope of any review by the Council, a review under this regulation may include an adjustment to the Applicable Royalty Rate under appendix IV and the manner and basis of the calculation of a royalty.

Section 8

Payments to the Authority

Regulation 83

Recording in Seabed Mining Register

1. All payments made by the Contractor to the Authority under this Part are non-confidential.
2. All payments received by the Authority from Contractors shall be recorded in the Seabed Mining Register.