

# **Briefing paper on conceptual topics related to the work of the Open-ended Working Group (OEWG) in Respect of the Development and Negotiation of the Financial Terms of a Contract**

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## **I. Background**

1. The purpose of this briefing paper is to assist delegations and observers in preparing for the upcoming meeting of the Open-ended Working Group of the Council (OEWG) during the first part of the twenty-ninth session, with a view to finalizing the discussion on the royalty mechanism.

2. The Indicative Programme of Work for the first part of the twenty-ninth session identifies the following two conceptual topics related to the financial terms of a contract as topics for further discussion within the OEWG:

- a. The royalty mechanism and the review mechanism; and
- b. The issue of environmental externalities.

3. As is also clear from the Indicative Programme of Work, the discussion of the equalization measure(s) will be continued in the context of an *informal informal* meeting.

## **II. The royalty mechanism and the review mechanism**

4. One day has been allocated to the discussions of the royalty mechanism and the review mechanism.

5. While substantial progress was achieved during the third part of the twenty-eighth session in refining the principles to guide the royalty mechanism and review mechanism, a number of specific issues remain open for further discussion.

6. The overall objective of the meeting is to further discuss the delegations' position on the open issues with a view to agreeing on the principles to guide the further development of the relevant Standards and accompanying Guidelines. The delegations are referred to the Suspense Document (which contains the latest iteration of the relevant Standards and Guidelines) and the Compilation Document (which includes recently received relevant proposals).

7. The specific issues proposed for further discussion include:

- a. The issue of financial incentives, in particular the purpose for which such incentives may be used in accordance with the Convention and the 1994 Agreement, and the regulatory techniques best suited to implement incentives (if any);

- b. The principles to govern the review of royalty payments (including the system of payments and the actual rates of payments), as reflected in the Draft Regulations on the review of the system of payments and the review of the rates of payments;
- c. The principles to govern a profit share in the event of a transfer of exploration and exploitation rights;
- d. Determining the date of the commencement of the respective periods of “Commercial Production”. Based on the discussions during the third part of the twenty-eighth session, this will be relevant to determine when the royalty payment obligation of contractors arises; and
- e. The role of the Economic Planning Commission in relation to the royalty and review mechanism.

### **III. The issue of environmental externalities**

8. Three hours have been allocated to discussion of environmental externalities.

9. In line with the decision of the Council (ISBA/27/C/43), the Secretariat was requested to commission a study on the environmental costs of exploitation activities, including how to internalize the costs associated with environmental externalities. The [Report on the value of ecosystem services and natural capital of the Area](#) was published on the ISA website on 31 May 2023, and was accompanied by a [Secretariat note](#), as requested by the Council, explaining its background and the modalities under which the report was commissioned. The report was subsequently supplemented by a [Guidance on the economic valuation of ecosystem services and natural capital of the Area](#) dated 26 October 2023.

10. During the third part of the twenty-eighth session, several delegations addressed the issue of whether and, if so, to what extent, environmental externalities should be integrated into the system of the royalty mechanism. It was proposed to further discuss this matter during the first part of the twenty-ninth session.

11. To facilitate the discussion, and in accordance with the proposal of several delegations, the author of the [Report on the value of ecosystem services and natural capital of the Area](#) and the [Guidance on the economic valuation of ecosystem services and natural capital of the Area](#), Dr Luke Brander (Germany), has been invited to attend the first part of the twenty-ninth session. Dr Brander will deliver a short presentation to summarize and explain the findings of his report, and will be at the delegations’ disposal to answer any questions.

12. Substantive issues that may remain open for discussion in the light of past discussions and the above reports include:

- a. The extent to which economic externalities in general, and environmental externalities in particular, can or should be taken into consideration in devising a royalty system and in determining royalty rates;
- b. The existence of an agreed methodology to guide the economic valuation of environmental externalities relating to the Area;
- c. The implications of incorporating environmental externalities into the royalty mechanism on the various elements of the royalty mechanism. This concerns, in particular, the treatment of environmental externalities when comparing the position of contractors with land-based miners, and the determination of the effective tax rate imposed on contractors for these purposes; and
- d. The impact of internalizing environmental externalities into the royalty mechanism on the revenues of the Authority.

13. Delegations will also have the opportunity to present any further proposals addressing the issue of environmental externalities.

#### **IV. The equalization measure(s)**

14. The discussion of proposals relating to equalization measure(s) will continue in *informal informals*. During the third part of the twenty-ninth session, several delegations emphasized that additional time was required to consider the issue of equalization measure(s), including the choice of any specific model to be applied. Three hours have been allocated for the purposes of this *informal informal* meeting. The discussions in the *informal informals* will be led by Australia as rapporteur, based on the valuable intersessional work conducted to date in the Open-ended Working Group, including on the possible implementation of the hybrid model.

15. Delegations are referred to the valuable intersessional work carried out in the past, [the outcomes and relevant reports](#) of which remain accessible to facilitate further consideration of these issues. The latest iteration of the relevant draft provisions may be found in the Suspense Document.