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Part 8A – Seabed Mining in the International Seabed Area

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Schedule 1

Amendments to Acts

Schedule 2

Amendments to regulations

An Act to—

The Parliament of the Cook Islands enacts as follows—

Subpart 1—Preliminary matters

113A Interpretation

In this Part, unless the context otherwise requires,—

Area means the seabed and ocean floor and subsoil beyond the limits of national jurisdiction, as defined in Article 1(1) of the UN Convention on the Law of the Sea

contract area means any part of the Area in respect of which there is in force a contract between a sponsored party and the ISA for the conduct of ISA Seabed Mineral Activities

CIIC means the Cook Islands Investment Corporation

exploitation means the recovery for commercial purposes of Seabed Minerals in the Area as is defined as **Exploitation** by the Rules of the ISA

exploration means the searching for deposits of Seabed Minerals in the Area with exclusive rights, as is defined as Exploration by the Rules of the ISA

country means the Cook Islands

incident means an event that occurs when—

- (a) any ship or installation or other similar item or structure while engaged in ISA Seabed Mineral Activities is lost, abandoned, capsized, collides, or incurs significant damage;
- (b) loss of life or injury requiring hospitalisation occurs on board any ship or installation while engaged in ISA Seabed Mineral Activities, except in the case of a loss of life that is certified by an independent medical practitioner as being the result of natural causes;
- (c) the conduct of ISA Seabed Mineral Activities results in significant unanticipated or unlawful adverse impact to or pollution of the Marine Environment or damage to submarine cables or other marine user; or
- (d) the ISA issues an emergency order in connection with the ISA Seabed Mineral Activities, or the sponsored party, at the requirement of the ISA or the Rules of the ISA, implements an emergency response plan or protocol

International Seabed Authority or **ISA** means the International Seabed Authority established by Part XI Section 4 of the UN Convention on the Law of the Sea as the organisation through which States Parties to the UN Convention on the Law of the Sea must organise and control ISA Seabed Mineral Activities in the Area

ISA Seabed Mineral Activities means operations for the exploration or exploitation of Seabed Minerals within the Area under contract with the ISA under the Cook Islands sponsorship in accordance with this Part

marine environment means—

- (a) the environment of the sea; and
- (b) includes the physical, chemical, geological, biological and genetic components, conditions and factors which interact and determine
 - (i) the productivity, state, condition and quality of the marine ecosystem; and
 - (ii) the waters of the seas and oceans; and
 - (iii) the airspace above those waters and the seabed; and
 - (iv) ocean floor and subsoil thereof

marine scientific research means any lawful study, research or other related scientific activity within the Area, whether fundamental or applied, intended to increase knowledge about the Marine Environment for the benefit of all mankind, and—

- (a) not undertaken directly for industrial or economic purposes; and
- (b) not significantly altering the surface or subsurface of the deep seabed; and
- (c) not significantly affecting the Marine Environment

public official means a person in the permanent or temporary employment of the Government of the Cook Islands

qualification criteria means the criteria that must be met before a Sponsorship Certificate can be issued, as stipulated in section 19(2) of this Act

rules of the ISA means—

- (a) any rules, regulations, or procedures adopted by the ISA under to powers conferred on the ISA by the UN Convention on the Law of the Sea that are from time to time in force; and
- (b) any contractual terms contained in a contract between the ISA and a sponsored party relating to ISA Seabed Mineral Activities

sponsored party means a person who holds a current Sponsorship Certificate, that person’s representatives or officers, and any person or persons to whom the Sponsorship Certificate may lawfully have been assigned

sponsorship applicant means a person applying for a Sponsorship Certificate under this Act

sponsorship application means an application made by a person for a Sponsorship Certificate under this Act

sponsorship certificate means a certificate validly issued by the Cook Islands under Part 4 of this Part

sponsoring state means a State Party to the UN Convention on the Law of the Sea, sponsoring a person to carry out exploration or exploitation in the Area in accordance with Article 153(2)(b) of the UN Convention on the Law of the Sea

state party means a State which has consented to be bound by the UN Convention on the Law of the Sea

technical committee means any Technical Committee, appointed by the Minister in accordance with section 113I

UN Convention on the Law of the Sea means the United Nations Convention on the Law of Sea of 10 December 1982 entered into force on 16 November 1994; the 1994 Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, and any Annexes thereto.

- (2) Unless a contrary intention appears, words and expressions used in this Part have the same meaning as used in the UN Convention on the Law of the Sea.

Scope of this Part

113B Scope of this Part

- (1) The objectives of this Act are to—
 - (a) enable the Cook Islands to act as a Sponsoring State for the purposes of engaging in ISA Seabed Mineral Activities in the Area;
 - (b) empower the Cook Islands to participate in ISA Seabed Mineral Activities whether directly, through a body corporate established under this Act, or through Sponsorship of a third party contractor with the ISA;
 - (c) establish a clear and stable legal operating environment for persons sponsored or engaged by the Cook Islands to undertake ISA Seabed Mineral Activities in the Area;

- (d) ensure that ISA Seabed Mineral Activities are carried out only by entities that are under the Cook Islands' effective control, and in a manner that is consistent with the Rules of the ISA and the Cook Islands responsibilities under the UN Convention on the Law of the Sea, and other applicable requirements of international law;
 - (e) implement measures to maximise the benefits of ISA Seabed Mineral Activities for present and future generations.
- (2) In order to achieve its objectives, this Part, among other things,—
- (a) identifies the responsible authority within Government to manage and regulate the Cook Islands involvement with ISA Seabed Mineral Activities, as the Seabed Minerals Authority;
 - (b) establishes a system for Sponsorship Application, and the grant of Sponsorship Certificates under which Sponsored Parties will be authorised to engage in ISA Seabed Mineral Activities under specific and enforceable conditions;
 - (c) provides for the Cook Islands to receive payments for its Sponsorship of ISA Seabed Mineral Activities, and for a ring-fenced Sovereign Wealth Fund for ISA Seabed Minerals revenues for the responsible long-term management of any such revenues generated by the Cook Islands from ISA Seabed Mineral Activities.
- (3) The provisions of this Part are based on an expectation that the Rules of the ISA and the ISA's monitoring and enforcement capacity will be developed in an appropriate and timely manner for the purpose of securing ISA Seabed Mineral Activities will comply with relevant standards and obligations of international law.

113C Jurisdiction

By this Part, the Cook Islands recognises—

- (a) the seabed resources of the area to be the common heritage of mankind; and
- (b) that the rights to the area are governed by the UN Convention on the Law of the Sea and the Rules of the ISA; and
- (c) the ISA's responsibility under the UN Convention on the Law of the Sea to organise and control activities in the area on behalf of mankind as a whole, including to—
 - (i) process applications for approval of plans of work for exploration and exploitation; and
 - (ii) monitor compliance with plans of work, approved in the form of a contract, including through a staff of inspectors; and
 - (iii) adopt rules, regulations and procedures necessary for the conduct of exploration and exploitation; and
- (d) the rules of the ISA for the—
 - (i) protection and preservation of the natural resources of the Area and the prevention of damage to the flora and fauna of marine environment; and

- (ii) prevention, reduction and control of: pollution and other hazards to, and the interference with the ecological balance of, the marine environment; and
- (iii) exercise of such control over activities in the area as is necessary for the purpose of securing compliance with the UN Convention on the Law of the Sea and the Rules of the ISA by contractors carrying out activities in the area; and
- (e) the responsibility of States Parties to assist the ISA in exercising the duty outlined in paragraph:
- (f) that ISA Seabed Mineral Activities must be carried out in association with the ISA only by—
 - (i) State Parties; or
 - (ii) State enterprises, or
 - (iii) persons sponsored by State parties; and
- (g) if a State is a Sponsoring State, the State's duty to effectively control any person engaged in activities in the area under its sponsorship, in order to ensure conformity of those activities with the UN Convention on the Law of the Sea and the Rules of the ISA.

113D ISA Seabed Mineral activities

- (1) The Cook Islands Government may, in accordance with the provisions of the UN Convention on the Law of the Sea, apply to the ISA to be issued a contract for ISA Seabed Mineral Activities directly, through a State enterprise, or in partnership with a sponsored party.
- (2) CIIC may act as a State enterprise under this Part for the purpose of entering into a contract with the ISA and being a sponsored party.

Subpart 2—Cook Islands sponsorship of seabed mineral activities

113E Administration

- (1) If a state-owned enterprise holds an ISA contract, the Minister (acting through CIIC) is responsible for the performance of the contract.
- (2) If the Cook Islands sponsors a sponsored party to conduct ISA Seabed Mineral Activities, the Seabed Minerals Authority is—
 - (a) responsible for the regulatory supervision of the sponsorship, and in particular for ensuring that the performance of the contract takes place in accordance with—
 - (i) the rules of the ISA; and
 - (ii) this Act; and
 - (iii) other relevant laws of the Cook Islands.
- (3) In undertaking these roles—
 - (a) CIIC and the Seabed Minerals Authority have all reasonable powers required, including a power to appoint any persons qualified for the purpose, to assist in the discharge of the relevant functions.

- (b) the Seabed Minerals Authority must act in a way that is compatible with principles of best regulatory practice, including that regulatory activities should be—
 - (i) proportionate; and
 - (ii) accountable; and
 - (iii) consistent; and
 - (iv) transparent; and
 - (v) targeted only at cases in which action is needed.

113F Consultation

The Seabed Minerals Authority may at any time and in any way that it sees fit consult with persons of relevant expertise, interest groups, the Technical Committee, the Cook Islands Seabed Minerals Advisory Board, or the general public, before taking a decision or action under this Part.

113G Objectives of the Seabed Minerals Authority

In performing its functions under this Part, the Seabed Minerals Authority has the following objectives:

- (a) to provide a stable, transparent and accountable regime within the Cook Islands for the sponsorship and supervision of ISA Seabed Mineral Activities;
- (b) to maintain effective control of Sponsored Parties, and to secure compliance Sponsored Parties with the rules of the ISA and any other relevant rules and internationally agreed standards;
- (c) to ensure that the conduct of ISA Seabed Mineral Activities maximises benefits to the Cook Islands and its people.

113H Functions of the Seabed Minerals Authority under this Part

- (1) The Seabed Minerals Authority, in relation to ISA Seabed Mineral Activities, has the following functions:
 - (a) receiving and considering recommendations regarding sponsorship applications, and preparing and issuing certificates of sponsorship for successful sponsorship applicants;
 - (b) liaising with the ISA and any other relevant international organisations to facilitate a sponsored party's application to the ISA for a contract, and the Cook Islands and its sponsored parties' understanding of and compliance with relevant international laws, standards, and rules;
 - (c) assisting the ISA in its work to establish, monitor, implement, and secure compliance with the Rules of the ISA;
 - (d) undertaking any advisory, supervisory, or enforcement activities in relation to ISA Seabed Mineral Activities or the protection of the Marine Environment, in the event this is required in addition to the ISA's work, in order for the Cook Islands to meet its obligations under the UN Convention of the Law of the Sea, whether as a State enterprise or as a Sponsoring State;
 - (e) requiring and reviewing relevant reports and information, and maintaining appropriate records, relating to ISA Seabed Mineral Activities;

- (f) insofar as they are not prescribed by law, negotiating financial terms in respect of ISA Seabed Mineral Activities with Sponsored Parties and other parties engaged in ISA Seabed Mineral Activities.
- (2) The Minister may give any directions to the Seabed Minerals Authority, not inconsistent with the provisions of this Part and the UN Convention on the Law of the Sea, as to the performance of the functions and duties of the Seabed Minerals Authority under this Part, as the Minister considers appropriate.

113I The Technical Committee

- (1) The Minister may at any time appoint a technical committee, which must, on the Seabed Minerals Authority's request, provide technical and policy advice and recommendations to the Seabed Minerals Authority to assist the Seabed Minerals Authority in the performance of its functions.
- (2) The technical committee is composed of officials and other members as determined by the Minister.

113J Jurisdiction of the High Court

The High Court has jurisdiction to determine proceedings—

- (a) involving the judicial review of administrative decisions, determinations, actions, or inquiries taken under this Part; or
- (b) to establish liability and to provide recourse for prompt and adequate compensation in the event of damage caused by ISA Seabed Mineral Activities, in accordance with Article 235(2) of the UN Convention on the Law of the Sea.

Subpart 3—Sponsorship application and application to the sea

113K Invitation for sponsorship applications

The Seabed Minerals Authority may in any manner it considers appropriate invite sponsorship applications, or entertain discussions with sponsorship applicants or potential sponsorship applicants.

113L Eligibility to Perform ISA Seabed Mineral activities

To be eligible to perform ISA Seabed Mineral Activities a sponsorship applicant must, in relation to those activities, first—

- (a) obtain a valid sponsorship certificate from the Seabed Minerals Authority; and
- (b) obtain a valid contract from the ISA.

113M The processing of sponsorship applications

The Seabed Minerals Authority—

- (a) must deal with sponsorship applications promptly, and in accordance with this Part;
- (b) may do 1 or more of the following things:
 - (i) request further information from a sponsorship applicant; or

- (ii) request the sponsorship applicant to amend any part of its sponsorship application, at any time before making a recommendation under section 113Q; and
- (iii) may return a sponsorship application without a decision if the sponsorship applicant fails to comply with a reasonable request under paragraph (a).

113N Evidence

- (1) In making a recommendation under section 113Q of this Act to sponsor or not to sponsor, the Seabed Minerals Authority may take into account—
 - (a) any or all of the information submitted by the sponsorship applicant; and
 - (b) any relevant information in the public domain; and
 - (c) any information received from the Technical Committee or other consultation; and
 - (d) any relevant information otherwise held in the records of Government of the Cook Islands.
- (2) A previous decision by the ISA to grant a sponsorship applicant a contract for activities similar to those that are the subject of a sponsorship application may be considered by the Seabed Minerals Authority as evidence in relation to any of the qualification criteria for that Sponsorship Application.

113O Content of a sponsorship application

A sponsorship application must be made in writing to the Seabed Minerals Authority and must—

- (a) provide evidence that the sponsorship applicant meets the qualification criteria; and
- (b) include—
 - (i) the same content that is required by the Rules of the ISA for an application for approval of a plan of work to obtain a contract for the proposed ISA Seabed Mineral Activities;
 - (ii) written undertakings by way of a statutory declaration that the sponsorship applicant—
 - (A) will fully comply with its obligations under the Rules of the ISA and this Part, including by submitting to the respective regulatory authorities of the ISA and the Seabed Minerals Authority;
 - (B) warrants that the content of the sponsorship application is true and accurate to the best of its belief, and
 - (C) intends to apply for a contract with the ISA to conduct Exploration or Exploitation in the Area under sponsorship by the Cook Islands;
 - (iii) copies and easily comprehensible summaries of any studies conducted by the sponsorship applicant or other data in relation to the potential of the site or sites within which the proposed ISA Seabed Mineral Activities will be conducted;

- (iv) copies or summaries of any studies conducted by the sponsorship applicant or other data in relation to potential impact of the ISA Seabed Mineral Activities on the Marine Environment:
- (v) an indication insofar as known of the sponsorship applicant's proposed:
 - (A) methods for financing the ISA Seabed Mineral Activities:
 - (B) ownership, leases or other arrangements to use vessels and equipment required for the operation of the ISA Seabed Mineral Activities:
 - (C) insurance or contingency funding to cover damage that may be caused by the ISA Seabed Mineral Activities or the costs of responding to an Incident:
- (vi) a list of employees required to operate the ISA Seabed Mineral Activities, and an indication if any of these will be recruited from the Cook Islands:
- (vii) a capacity-building programme providing for the training of personnel of the Cook Islands:
- (viii) the fee required by section 113ZI of this Act:
- (ix) a statement as to whether the sponsored party or any of its directors has previously been found on reasonable evidence to have:
 - (A) breached a material term or condition of the Rules of the ISA:
 - (B) been convicted of an offence or incurred a civil penalty relating to the conduct of ISA Seabed Mineral Activities or similar sea or land based activities in another jurisdiction; or
 - (C) been convicted of an offence involving fraud or dishonesty:
- (x) any further matters as may be prescribed by the regulations.

113P Qualification Criteria

- (1) The Seabed Minerals Authority may recommend to the Minister that the Minister issue of a sponsorship certificate if it is satisfied that—
 - (a) the undertakings required by section 113O have been given:
 - (b) the qualification criteria in subsection (2) are met; and
 - (c) the proposed ISA Seabed Mineral Activities—
 - (i) will not result in irreparable harm to any community, environment, cultural practice, or industry in the Cook Islands; and
 - (ii) would be generally in the public interest of the country, taking into account the potential for capacity-building and/or local employment and the long-term economic benefit to the Cook Islands.
- (2) The qualification criteria are that—
 - (a) the sponsorship applicant—
 - (i) is an existing body corporate, registered in the Cook Islands;
 - (ii) has, or will have, at the commencement of the proposed ISA Seabed Mineral Activities, sufficient financial and technical resources and capability, to—

- (A) properly perform the ISA Seabed Mineral Activities in compliance with the Rules of the ISA; and
- (B) to cover damage that may be caused by the ISA Seabed Mineral Activities or the costs of responding to an Incident; and
- (iii) has paid any applicable fees:
- (b) the proposed ISA Seabed Mineral Activities are—
 - (i) consistent with the Rules of the ISA, including in relation to environmental management and the common heritage of mankind; and
 - (ii) compatible with applicable national and international laws, including those relating to safety at sea and the protection and preservation of the marine environment; and
 - (iii) will not unduly affect—
 - (A) the rights of other legitimate sea users; or
 - (B) the protection and preservation of the marine environment, or
 - (C) international peace and security.

113Q Sponsorship certificate recommendation

- (1) The Seabed Minerals Authority must make a recommendation to the Minister, based on the Technical Committee’s advice, whether to sponsor or not sponsor the sponsorship applicant.
- (2) The Minister must present the recommendation to Cabinet, as soon as practicable after receiving it.

113R Sponsorship certificate decision

- (1) Cabinet must make a decision, based on the Seabed Minerals Authority’s recommendation, whether or not to sponsor with sponsorship of the sponsorship applicant.
- (2) The Seabed Minerals Authority will inform the sponsorship applicant of the decision taken under subsection (1) within 10 days of that decision having been taken by the Cabinet.

113S Notice of sponsorship certificate decision

- (1) If a decision is taken under section 113R(1), the Seabed Minerals Authority must—
 - (a) provide the sponsorship applicant with a written statement of reasons for that decision; and
 - (b) give the sponsorship applicant a reasonable opportunity to re-submit an amended version of that sponsorship application, without requiring another application fee.
- (2) If a decision is taken by the Cabinet to sponsor a sponsorship applicant, public notice of the decision must be given by the Seabed Minerals Authority within 30 days of that decision.

113T Terms of the sponsorship certificate

If a decision is taken by the Cabinet to sponsor a sponsorship applicant, a sponsorship certificate, signed by the Minister, must be issued to the sponsored

party and must be in a form necessary to satisfy the Rules of the ISA, and must contain—

- (a) the name of the sponsored party:
- (b) a statement that the sponsored party is—
 - (i) a national of the Cook Islands; or
 - (ii) subject to the effective control of the Cook Islands or its nationals:
- (c) a statement by the State that it sponsors the sponsored party:
- (d) the date of deposit by the State of its instrument of ratification of, or accession or succession to, the UN Convention on the Law of the Sea:
- (e) a declaration that the State assumes responsibility in accordance with article 139, article 153, paragraph 4, and Annex III, article 4, paragraph 4, of the UN Convention on the Law of the Sea:
- (f) the date at which the sponsorship commences:
- (g) a statement that the sponsorship certificate remains in force for the duration of any ISA contract awarded to the sponsored party under the State's sponsorship, unless otherwise terminated in accordance with this Act and the Rules of the ISA:
- (h) any other content reasonably required by the ISA or that the Seabed Minerals Authority considers appropriate to include.

113U Application by sponsored party to ISA

- (1) A sponsored party must, on the basis of the sponsorship application, submit an application to the ISA for a contract to explore or exploit in the area under the Cook Islands sponsorship, if it wishes to explore or exploit in the area.
- (2) The Seabed Minerals Authority must provide all reasonable co-operation to the sponsored party to facilitate the preparation, submission, and support of the application to the ISA.
- (3) The costs of presenting that application to the ISA must be met by the sponsored party, including any costs reasonably incurred by the Government of the Cook Islands in taking actions either requested by the sponsored party or considered necessary by the Government of the Cook Islands under the Rules of the ISA, to support the application before the ISA.

113V Sponsorship agreements

- (1) The Minister, with Cabinet's approval on the recommendation of the Seabed Minerals Authority, may enter into written agreements with the sponsored party at any time to establish additional terms and conditions as to the sponsorship arrangement.
- (2) Subsection (1) only applies if—
 - (a) the Technical Committee has been consulted, and its views taken into account, by the Seabed Minerals Authority before the Seabed Minerals Authority makes any recommendation to Cabinet to enter into such an agreement; and
 - (b) the terms of such an agreement do not or are not likely to lead to a contravention by the Government of the Cook Islands or the sponsored party of the Rules of the ISA or this Act.

Subpart 4—Obligations pertaining to the conduct of ISA Seabed Mineral Activities

113W Duties relating to ISA Seabed Mineral Activities

Any person engaging in ISA Seabed Mineral Activities is required, amongst other matters to—

- (a) comply with the provisions of the Rules of the ISA and this Part;
- (b) provide sufficient training, supervision and resources to employees, agents, or officers so as to ensure compliance with the Rules of the ISA and any other instructions or requests of the ISA.
- (c) facilitate the ISA's and the Seabed Minerals Authority's regulation of ISA Seabed Mineral Activities in accordance with the Rules of the ISA and this Act and comply with the reasonable requests, directions, or orders of the ISA, or of the Seabed Minerals Authority made under this Part.
- (d) apply the Precautionary Approach, and employ best environmental practice in accordance with prevailing international standards in order to avoid, mitigate, or remedy adverse effects of ISA Seabed Mineral Activities on the marine environment:
- (e) offer to government officials and nationals of the Cook Islands opportunities for training in relation to, and opportunity to participate in, the ISA Seabed Mineral Activities:
- (f) regularly consult with, refer any technical matters to, and take into account in its decision-making relating to ISA Seabed Mineral Activities, any recommendations from the Seabed Minerals Authority;
- (g) at all material times maintain appropriate insurance policies that provide adequate cover for identified risks and costs of damages that may be caused by the ISA Seabed Mineral Activities, or otherwise satisfy the Cook Islands of its financial and technical capability to respond to potential incidents:
- (h) report to the ISA and the Seabed Minerals Authority immediately in the event of an incident occurring or appearing reasonably likely to occur; and respond efficiently and responsibly to the Incident, including by seeking and following the ISA's, and the Seabed Minerals Authority's directions, where appropriate:
- (i) submit to the ISA and the Seabed Minerals Authority, immediately in writing, notice of any new information arising or data collected that materially affect—
 - (i) the qualification criteria; or
 - (ii) the programme of work; or
 - (iii) the sponsored party's ability to adhere to the terms of the Rules of the ISA:
- (j) at all material times ensure that:
 - (i) any vessels, installations, and equipment engaged in ISA Seabed Mineral Activities are registered with a reputable shipping registry, in good repair, and comply with the laws of the flag state; and

- (ii) working conditions for personnel engaged in ISA Seabed Mineral Activities meet applicable employment rules and health and safety standards:
- (k) ensure that mineral materials or waste are not dumped from any vessel being used for the ISA seabed mineral activities, except in accordance with relevant international law or the Rules of the ISA:
- (l) ensure that ISA Seabed Mineral Activities do not proceed or continue, without obtaining prior specific written consent from the ISA to proceed, if evidence arises that to proceed is reasonably likely to cause significant adverse impact to—
 - (i) the marine environment; or
 - (ii) the safety, health or welfare of any person;
 - (iii) other existing or planned legitimate sea uses including, but not limited to, marine scientific research, navigation, submarine cables, fisheries, or conservation activities:
- (m) ensure that the content of data, reports, or other information submitted to the ISA in relation to the relevant seabed minerals activities are true, accurate, and comprehensive, and that copies of the same are submitted to the Seabed Minerals Authority along with easily comprehensible summary documents:
- (n) ensure that trading arrangements or sub-contracts with third parties for the delivery of services relating to the performance of ISA Seabed Mineral Activities are entered only where such sub-contracts contain provisions—
 - (i) to ensure the conformity of any sub-contractor’s activities with—
 - (A) the Rules of the ISA and this Act; and
 - (B) any other applicable laws of the Cook Islands; and
 - (ii) requiring that evidence to verify this be provided to the Seabed Minerals Authority on request.

113X Liability of sponsored party and indemnity against third party claims

- (1) A sponsored party is—
 - (a) responsible for—
 - (i) the performance of all ISA Seabed Mineral Activities carried out within the Contract Area; and
 - (ii) their compliance with the Rules of the ISA; and
 - (b) liable for the actual amount of any compensation, actionable damage to third parties or the environment, or penalties arising out of its failure so to comply, or out of any acts or omissions in the conduct of the ISA Seabed Mineral Activities.
- (2) The sponsored party must at all times keep the Cook Islands government indemnified against all actions, proceedings, costs, charges, claims and demands which may be made or brought by any third party in relation to its ISA Seabed Mineral Activities.

Subpart 5—Role of the Cook Islands as sponsoring state or state enterprise

113Y Duties as Sponsoring State

- (1) If the Cook Islands is sponsoring a sponsored party the Cook Islands via the Seabed Minerals Authority must—
 - (a) seek to ensure that the sponsored parties conduct in relation to the ISA, the Area and ISA Seabed Mineral Activities adheres to the requirements and standards established by general principles of international law:
 - (b) take all appropriate means to maintain effective control over sponsored parties, and to ensure that any ISA Seabed Mineral Activities are carried out in conformity with the UN Convention on the Law of the Sea, the Rules of the ISA, and other requirements and standards established by general principles of international law:
 - (c) do all things reasonably necessary to give effect to its sponsorship of a sponsored party, including undertaking any communications with, and providing any assistance, documentation, certificates and undertakings to the ISA or other relevant party required in respect of the Sponsorship:
 - (d) not impose—
 - (i) unnecessary, disproportionate, or duplicate regulatory burdens on sponsored parties:
 - (ii) requirements on a sponsored party under this Act or the Regulations unless, and insofar as these are consistent with existing requirements imposed by applicable standards of international law or are otherwise in the best interests of the Cook Islands:
 - (e) promote the application of the precautionary approach by the sponsored party.

113Z Monitoring powers

- (1) The Seabed Minerals Authority may make any examinations, inspections, and enquiries of sponsored parties and the conduct of ISA Seabed Mineral Activities that are necessary to meet its responsibilities under international law.
- (2) These examinations, inspections, and inquiries may include—
 - (a) the sending of an observer to the site of the ISA Seabed Mineral Activities and vessel or premises of the sponsored party; or
 - (b) the inspection of relevant books, records and other relevant data at any time to time on giving reasonable notice to the sponsored party.
- (3) An observer must take all reasonable steps to avoid interference with the safe and normal operations taking place on board vessels.
- (4) The Seabed Minerals Authority may direct any person to give it within a reasonable time any information—
 - (a) it reasonably believes is in that person’s possession; and
 - (b) which is directly relevant to the discharge of the Seabed Minerals Authority’s functions.
- (5) Failure to comply with a direction made under this section without reasonable justification is an offence punishable on conviction by a maximum fine of [**\$ to come**].

113ZA Administrative action

- (1) If the Seabed Minerals Authority determines that a sponsored party has materially breached, or in the Seabed Minerals Authority’s reasonable opinion is at serious risk of materially breaching, the Rules of the ISA, or this Part, the Seabed Minerals Authority may:
 - (a) issue written warnings, including warnings in relation to possible action the Seabed Minerals Authority may take in the event of future material breaches:
 - (b) enter into a written agreement providing for the sponsored party to undertake a programme of remedial action and to mitigate the risk of re-occurrence:
 - (c) issue a written direction requiring the sponsored party to take specified action, or not take specified action, within a specified timeframe, aimed to stop, remedy or mitigate the risk of occurrence or re-occurrence of material breach:
 - (d) in the case of actual material breach of the Rules of the ISA or a direction made under paragraph (c)—
 - (i) impose on the sponsored party monetary penalties proportionate to the seriousness of the violation, but no greater than \$[10,000 for each day for which the breach continues, which amount excludes any compensation payable for damage or harm]:
 - (ii) commence a process under section 113ZF to revoke the sponsorship certificate.
- (2) Action taken under subsection (1) must be commensurate with the gravity, frequency, and other circumstances of the material or reasonably anticipated breach, including the sponsored party’s previous conduct under the Cook Islands Sponsorship.

Subpart 6—Register, termination, transfer, extension of sponsorship

113ZB Records

- (1) The Seabed Minerals Authority must retain up-to-date and accurate records of sponsorship applications received, sponsorship certificates issued, ISA contracts held, and all ensuing communication, reports or other information created or received.
- (2) The Seabed Minerals Authority must ensure that all such records are held with appropriate confidentiality, and must not disclose commercially sensitive information unless agreed otherwise with the sponsored party.
- (3) Subsection (2)—
 - (a) overrides the Official Information Act 2008; but
 - (b) is subject to any order of a court.

113ZC Security of Tenure

A sponsorship certificate remains in force unless and until it is terminated in accordance with section 113ZD.

113ZD Termination

- (1) A sponsorship certificate terminates if, under this Act—
 - (a) the sponsored party’s contract with the ISA expires, is surrendered, or is terminated;
 - (b) it is surrendered by the sponsored party in accordance with section 113ZD;
 - (c) it is revoked by the Seabed Minerals Authority in accordance with section 113ZE under the sponsorship certificate lease.
- (2) On termination all rights granted by the Cook Islands under the sponsorship certificate cease.

113ZE Surrender of Sponsorship

A sponsored party may at any time surrender a sponsorship certificate without penalty by—

- (a) giving to the Seabed Minerals Authority not less than three months’ previous notice in writing to that effect; and
- (b) complying with any relevant Rules of the ISA.

113ZF Revocation of Sponsorship

The Minister, with Cabinet’s approval may revoke a sponsorship certificate, on the Seabed Minerals Authority’s recommendation, for 1 or more of the following reasons:

- (a) in any case, with the written consent of the sponsored party;
- (b) if the sponsored party has failed to apply to the ISA for a contract, or has applied but failed to obtain a contract with the ISA, within three years of the date of issue of the sponsorship certificate;
- (c) no material efforts have been made by the sponsored party to undertake the ISA Seabed Mineral Activities for a period exceeding five years from the date of signing the contract with the ISA;
- (d) if—
 - (i) the sponsored party has conducted its activities in such a way as to result in a serious, persistent or wilful violation of the Rules of the ISA, the requirements of this Part, or a final binding decision of a dispute settlement body applicable to it; and
 - (ii) that violation either cannot be remedied or has not been remedied on the giving of reasonable notice by the Seabed Minerals Authority or the ISA;
- (e) if the sponsored party knowingly or recklessly provides the ISA or the Seabed Minerals Authority with information which is false or misleading in a material particular; or
- (f) if the sponsored party fails to retain for a reasonable time period, wilfully alters, suppresses, conceals or destroys any document which is required to be produced to the ISA or the Seabed Minerals Authority; or
- (g) if, following at least two written notices given by Seabed Minerals Authority in accordance with this Act, any payment or deposit required under section 113ZI or is in arrears or unpaid for six months following the day on which it ought to have been paid.

113ZG Notice of revocation

Before making a decision under section 113ZF the Seabed Minerals Authority must—

- (a) give to the sponsored party at least 30 days’ written notice of the Seabed Minerals Authority’s intention to make the decision, setting out details of that proposed decision and the reasons for it, and inviting the sponsored party to make a written submission to the Seabed Minerals Authority about the proposed decision within a specified timeframe, if the sponsored party objects to the proposed decision:
- (b) take into account in the decision any submissions received:
- (c) if the decision taken in paragraph (a) is to revoke the sponsorship certificate, give the sponsored party no fewer than 6 months’ notice before that revocation takes effect.

113ZH Ongoing liability after termination

Despite the revocation of a sponsorship certificate, the previously sponsored party remains—

- (a) subject to any ongoing obligations with respect to ISA Seabed Mineral Activities that occurred prior to termination, including requirements to submit reports and to make any required payments to the Seabed Minerals Authority or the ISA; and
- (b) responsible, in accordance with this Part, for any damage or claims from its acts or otherwise arising from Seabed Minerals Activities carried out prior to termination,

Subpart 7—Fiscal arrangements

Sponsorship application fee

113ZI Payments by sponsored parties

- (1) A sponsorship applicant must pay to the Seabed Minerals Authority on submission of a sponsorship application, a non-refundable fee of US\$15,000.

Administration fees

- (2) The holder of a sponsorship certificate must pay to the Seabed Minerals Authority an annual administration fee of US\$20,000—
 - (a) within six months from the date of the issue of the sponsorship certificate, and
 - (b) every year after that, on the anniversary each year of the date of the issue of the sponsorship certificate.
- (3) During the fifth year of the term of the sponsorship certificate, the Seabed Minerals Authority may—
 - (a) review the amount of the administration fee required each year for the remainder of the term of the Sponsorship Certificate; and
 - (b) may reasonably increase the amount where this is required to cover the actual costs to the Cook Islands of administering and supervising the sponsorship.

Seabed Mineral recovery payment

- (4) A sponsored party holding an ISA contract for Exploitation under the Cook Islands sponsorship must pay to the Seabed Minerals Authority such sums by way of a recovery payment as and when are agreed and specified in a written agreement made under section 113V before the commencement of Exploitation by the sponsored party.
- (5) The recovery payment amount must—
 - (a) take into account the set-up, exploration and exploitation costs incurred by the sponsored party, and
 - (b) be based on a percentage of the latest market value of the metal content contained in the Seabed Minerals to be extracted by the sponsored party through the Seabed Minerals Activities.

113ZJ Seabed Minerals Fund

Any sums paid to the Cook Islands Government under this Part (except any funds allocated by MFEM) to be used directly for the purposes of covering the costs of the Seabed Minerals Authority and performing its functions under this Part must be paid in the Sovereign Wealth Fund referred to in section 84.

113ZK Taxation

A sponsored party is subject to the laws relating to the payment of corporate tax within the Cook Islands in relation to its profit from ISA Seabed Mineral Activities.

113ZL Financial payments to the ISA

A sponsored party is responsible for making prompt and full payment of any sums due to the ISA, under the Rules of the ISA.

113ZM Recovery of payments owed by sponsored parties

A sum of money payable pursuant to section 113ZK of this Act, is a debt due to the State, and may be recovered in a court of competent jurisdiction, and—

- (a) in any such proceedings a certificate of the Seabed Minerals Authority certifying that a specified sum of money is so payable, may be received as evidence of that fact; and
- (b) any debt of the sponsored party may at the court's discretion be recovered from any security deposited by the same sponsored party under section 113ZN; and
- (c) interest on the amount outstanding may additionally be charged at a prescribed or otherwise reasonable rate.

113ZN Security

- (1) The Seabed Minerals Authority may, after an exploitation contract has been granted by the ISA to the sponsored party, and before exploitation commences, require a sponsored party to deposit security as a guarantee of performance of its obligations under the Rules of the ISA and this Act.
- (2) The form and value of any such security required, and the terms upon which it will be held, will be specified in a written agreement made under section 113V, and must take into account the type and quantum of any security that the sponsored party is also required to deposit with the ISA.

- (3) A security deposited in accordance with this section may be used by the Seabed Minerals Authority to—
 - (a) take steps towards fulfilling any obligations that the sponsored party fails to fulfil under this Act; or
 - (b) rectify any damage or loss caused as a result of such failure; or
 - (c) satisfy any order of compensation or damages made against the sponsored party by the High Court.

Subpart 8—Miscellaneous

113ZO Inquiries into Incidents

The Seabed Minerals Authority may hold or may commission inquiries into incidents in the area.

113ZP Nothing to authorise unlawful interference with other sea users

This Part does not authorise the unlawful interference with the freedom of the high seas or the conduct of Marine Scientific Research by other persons or nation under the general principles of international law.

113ZQ Rights of other States not affected

This Part does not affect the rights of coastal States in accordance with Article 142 and other relevant provisions of the UN Convention on the Law of the Sea.

113ZR Interference with ISA Seabed Mineral Activities or the Seabed Minerals Authority

- (1) Unless authorised under this Act or the Regulations, any third party who interferes with ISA Seabed Mineral Activities, or the Seabed Minerals Authority or its representative in the performance of duties under this Part or incites another person to so behave commits an offence and is liable on conviction to a fine not exceeding [**\$amount to come**] or to imprisonment for a term not exceeding [**to come**] years or both.
- (2) For the purposes of subsection (1), **interfere** means wilful sabotage of ISA Seabed Mineral Activities, or violence against or similar physical interference with any representative of the Seabed Minerals Authority or person conducting ISA Seabed Mineral Activities.

113ZS Public Officials prohibited from acquiring Seabed Mineral rights

- (1) No Public Official may, directly or indirectly, personally acquire any right or interest in any sponsored party contract for ISA Seabed Mineral Activities, and any document or transaction purporting to confer any right or interest on any public official is null and void.
- (2) No Public Official engaged by the Seabed Minerals Authority may directly or indirectly acquire or retain any personal share-holding in a private company carrying on ISA Seabed Mineral Activities.

113ZT Offence committed by a body corporate

If an offence under this Part committed by a body corporate has been committed with the consent or connivance, or is attributable to the neglect, of any Director

or officer of the body corporate, that officer as well as the body corporate is guilty of that offence.

113ZU Notice

Any application, request, notice, warning, report, or direction made or given under this Part—

- (a) must be made by the Minister or by the designated representative of the sponsored party, as the case may be, in writing; and
- (b) is deemed to be served the day after delivery, if delivered by hand, facsimile or email to the Minister or to the designated representative.

113ZV Disputes

- (1) Any dispute arising between the Cook Islands and another State in connection with ISA Seabed Mineral Activities must be resolved under the provisions of the UN Convention on the Law of the Sea.
- (2) Any dispute between the Cook Islands and the sponsored party arising in connection with the administration of this Act must be dealt with by—
 - (a) the parties attempting to reach settlement by mutual agreement or mediation, and in the event this is not successful then:
 - (b) by referral to arbitration to be conducted in accordance with the Arbitration Act of the Cook Islands.

113ZW Regulations

- (1) The Queen’s Representative may, with the approval of Cabinet, make regulations prescribing anything required or authorised to be prescribed under this Part or generally for carrying this Part into effect.
- (2) Those Regulations must be consistent with the UN Convention on the Law of the Sea, the Rules of the ISA, and other applicable standards of international law.

[insert shoulder reference, eg, “s 19(1)”]

Schedule 1
Amendments to Acts

[Set out amendments to Acts]

[insert shoulder reference, eg, “s 19(2)”]

Schedule 2
Amendments to regulations

[Set out amendments to regulations]

This Act is administered by the [insert name of administering department].
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