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Item 14 of the provisional agenda*

Report on matters relating to the Enterprise

Letter dated 17 December 2018 from the Special Representative of the Secretary-General of the International Seabed Authority for the Enterprise addressed to the Secretary-General of the International Seabed Authority

In accordance with the terms of reference of the contract issued to me on 29 August 2018 I have the honour to transmit herewith my report on the proposal by the Government of Poland for a joint venture with the Enterprise (see annex).

(Signed) Edén Charles
Special Representative of the Secretary-General of the International
Seabed Authority for the Enterprise

* ISBA/25/C/L.1.



Annex to the letter dated 17 December 2018 from the Special Representative of the Secretary-General of the International Seabed Authority for the Enterprise addressed to the Secretary-General of the International Seabed Authority

Report of the Special Representative of the Secretary-General of the International Seabed Authority for the Enterprise on the proposal by the Government of Poland for a joint venture with the Enterprise

I. Introduction

1. On 27 April 2018, the Secretary-General of the International Seabed Authority received an expression of interest in the form of a letter from the Secretary of State for the Ministry of the Environment of the Government of Poland, Mariusz Orion Jedrysek, to enter into negotiations to form a joint venture with the Enterprise.

2. During the twenty-fourth session of the Council, on 25 July 2018, the President of the Council indicated that the Council had taken note of the report, noted that a full proposal for a joint-venture operation with the Enterprise was expected to be included on the agenda of the Council in 2019 and requested the Secretary-General to make any necessary arrangements in that regard.

3. On the basis of the expectation of the Council that a full proposal for a joint venture would be on its agenda in 2019 and following the discussions that took place in the Council in July 2018, the Secretary-General appointed, on a temporary basis, Eden Charles as his Special Representative for the Enterprise, with the specific mandate set out in the terms of reference of the contract dated 29 August 2018 to liaise with the relevant representatives of the Government of Poland regarding the expression of interest in forming a joint venture with the Enterprise and to report to the Council.

4. The Special Representative is expected to make an independent assessment of the proposal with a view to ensuring that the terms of the joint venture are consistent with the provisions of article 153, paragraph 2 (a), and article 170 of the United Nations Convention on the Law of the Sea, as well as the provisions of article 2, paragraph 2, of annex IV to the Convention and the relevant provisions of 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. He is also expected:

(a) To ensure that, in any proposal that is finalized, the requirements of section 2, paragraph 5, of the annex to the 1994 Agreement, including the legal and financial risks that may arise as a result of the implementation of section 2 of the annex to the Agreement, are taken into consideration;

(b) To analyse the business proposal to ensure that it accords with sound commercial principles;

(c) To prepare a report including appropriate recommendations for presentation to and consideration of the Council during the first part of the twenty-fifth session (25 February–1 March 2019).

5. In keeping with his mandate, the Special Representative met with a delegation from Poland at the Authority's United Nations office in New York, on 11 and 12 December 2018, to discuss matters related to the proposal to form a joint venture that was transmitted in a non-paper on 6 December 2018, which is provided in

enclosure I to the present report.¹ The delegation was composed of the head of delegation, Piotr Nowak, a lawyer from the Law Department of the Ministry of the Environment, Michael Kobylinski, a lawyer from the Department of Geology and Geological Concessions, Michael Wiercinski, and an expert from the Department of Geology and Geological concessions, Barosz Jasinski.

6. Over two days of intensive negotiations, the Special Representative submitted proposals in an effort to ensure that the non-paper satisfied the requirements of part XI of the Convention and the relevant provisions of the 1994 Agreement and was based on sound commercial principles. Although those proposals, largely of a preliminary nature, were considered by the delegation of Poland to be generally acceptable *ad referendum*, a number of paragraphs are still subject to further negotiation and are represented in brackets in the draft proposal for a joint venture, which is provided in enclosure II to the present report.¹

7. The outcome of the negotiations, which resulted in the emergence of a draft proposal for a joint venture, based on the non-paper, demonstrates the willingness of the negotiators to act in good faith, in line with the action taken by their authorities to work with the Authority to secure the independent operation of the Enterprise. This point is supported by the language of part III of the draft joint venture, which calls for the commencement of the joint venture upon signature by both parties. However, a number of outstanding issues remain to be addressed so as to ensure that they meet the requirements that are essential to the completion of a joint venture that fulfils the criteria laid down in the prescribed law.

8. The Special Representative is optimistic that the outstanding issues will be settled in accordance with the display of cordiality, flexibility and cooperation that characterized the negotiations during the first meeting, without compromising the relevant laws and regulations.

II. Legal status of the Enterprise

9. During the negotiations, it was advanced that the proposed joint venture would fail ab initio if it was inconsistent with the relevant law governing such arrangements. It was repeatedly noted during the examination of the non-paper that it would be necessary to ensure that the joint venture was in compliance with the law as reflected in section 2 of the annex to the 1994 Agreement and was based on sound commercial principles. The Polish delegation agreed that this was the only basis upon which the Council would be allowed to issue an appropriate directive under article 170 and annex IV of the Convention and upon which the Enterprise would be allowed to operate independently of the secretariat and carry out activities in the Area directly, in addition to the transporting, processing and marketing of minerals exploited in the Area.

III. Terms of the joint venture

10. Despite the preliminary nature of the negotiations, an attempt was made to use acceptable language in the terms of the proposed joint venture, including the commercial terms upon which the joint venture is to be formed. In that regard, and taking into consideration the recommendations contained in paragraph 2 (d) of

¹ The enclosures are being circulated in the language of submission only and without formal editing.

document [ISBA/19/C/4](#), the Special Representative and the Polish delegation agreed that the proposal should reflect the following, among other things:

- (a) Participating interests;
- (b) Financial and technical contributions;
- (c) Management of the joint venture;
- (d) Work programme and budget;
- (e) Marketing and sale of joint-venture products;
- (f) Sound commercial principles;
- (g) Matters related to the risks and costs associated with the project;
- (h) Consistency with the provisions of article 293, on applicable law, of the Convention and article 13 of annex IV to the Convention, including the agreement on the privileges and immunities of the Enterprise;
- (i) Measures for the resolution of disputes;
- (j) Matters related to confidentiality and disclosure of information.

IV. Areas of operation

11. In order for the proposed joint venture to qualify within the meaning of the relevant law, the reserved area blocks in which operations are to be conducted should be indicated, taking into consideration the provisions of section 2, paragraph 5, of the annex to the 1994 Agreement, as well as the relevant regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area. There should also be an indication of the duration of the venture. It should be noted that, in the draft proposal, such matters are considered to be essential to the finalization of the venture, as is suggested through the language used in part XIII of the draft.

V. Business proposal/heads of agreement

12. The development of a business proposal/heads of agreement to establish the terms governing the effective operation of the joint venture is considered in part IV of the draft proposal. The business proposal would cover a work programme over a 15-year period, to be conducted in 5-year intervals, issues related to the conduct of surveys, geological research, research methods and changes to the work programme, among other things. All of these matters are expected to be developed during the intersessional period and discussed during the next round of negotiations. In giving consideration to the joint venture, the Council is also expected to address matters related to the adequacy of the business proposal.

13. It should be noted that such an approach to forming a joint venture was agreed upon by the Council in the context of the proposal made in 2013 by Nautilus Minerals Inc. to enter into negotiations to establish a joint venture with the Enterprise. It is recommended that a similar approach be adopted with regard to the proposal from Poland.

VI. National legislation governing activities in the Area

14. During the negotiations, the Special Representative also enquired as to whether Poland had enacted legislation to give effect to its obligations under article 209 of the

Convention, relating to the prevention, reduction and control of pollution of the marine environment from activities in the Area, and to its obligations under article 13, paragraphs 1 and 2, of annex IV to the Convention, on the legal capacity of the Enterprise to exercise its functions and fulfil its purposes in the territory of that country. The Polish delegation advised that such legislation was receiving the active and timely consideration of the relevant authorities in their country.

VII. Observations

15. The Special Representative is cognizant of the fact that, with the development of regulations governing the exploitation of minerals in the Area and the renewed interest shown in the operationalization of the Enterprise independently of the secretariat, the Council should provide the enabling environment, pursuant to the Convention and the relevant paragraphs of the 1994 Agreement, to ensure that the Enterprise, as a unique entity established by international law, is able to directly engage in commercial mining activities in the reserved areas, which represent the assets of the Enterprise in terms of mineral resources. This enabling environment would help to advance the implementation of article 136 of the Convention, which provides that the Area and its resources are the common heritage of mankind, and to establish the corresponding system outlined in article 153 of the Convention. It would also create an avenue for developing countries which are unable to do so either directly or as sponsoring States to participate in activities in the Area, as provided under the Convention and the 1994 Agreement.

16. In addition, according to the law and as an organ of the Authority, the Enterprise, when it starts to operate, will be allowed to engage in mining activities in the Area, as well as the transporting, processing and marketing of minerals recovered from the Area. Such a development is in keeping with the unique role of the Enterprise, as, although it is required to act in accordance with the general policies of the Assembly and the directives of the Council, it is to enjoy autonomy in the conduct of its operations.

17. In addition, any failure to operationalize the Enterprise would affect the direct implementation of the principle of the common heritage of mankind, which is a peremptory norm of international law, as manifested under article 311, paragraph 6, of the Convention.

18. The importance of the Enterprise was also emphasized in the final report of the Committee established by the Assembly to carry out a periodic review of the international regime of the Area pursuant to article 154 of the Convention ([ISBA/23/A/3](#), annex), in which the Committee recommended that the Legal and Technical Commission be requested to continue to address the issue of the operationalization of the Enterprise as an important matter in the light of developments with respect to deep-sea mining.

19. It should be noted that the proposed programme of work to cover exploration activities over a 15-year period in the draft proposal includes several phases. The further development of those phases and their eventual acceptance by the Council will also be in line with the recommendation included in the report on the review of article 154 mentioned above. Further to the modified application of the Convention resulting from the 1994 Agreement in relation to the operationalization of the Enterprise, the Council has to determine whether one of two possible triggers exist that would make the Enterprise independent, namely, the receipt by the Council of an application for a joint-venture operation with the Enterprise or the approval of a plan of work for mining for another entity.

20. The Council, in assessing the proposed joint venture, should also recall that its approval would not require any fundamental changes to certain existing procedures, if such procedures are carried out before the independent operation of the Enterprise. This relates to the participation of the Enterprise as a stakeholder in the negotiations of the exploitation code, as, pursuant to the 1994 Agreement, the obligations assumed by contractors are also applicable to the Enterprise, and, like other contractors, it is also required to apply for a plan of work for mining. Consequently, the Special Representative is of the view that the adoption of the exploitation code without an opportunity for an autonomous Enterprise to make submissions as an important stakeholder in the exploitation of minerals in the Area would create a serious gap in the mining code. The gap is also significant when issues connected to reserved areas are discussed. Operationalizing the Enterprise before the adoption of the exploitation code would be consistent with the spirit and letter of the Convention and the 1994 Agreement. It should be noted again that the agreement by the Council of the proposed joint venture, when it is finalized, would provide a trigger for the operationalization of this mining organ of the Authority.

21. It has been agreed that the joint venture should be based on sound commercial principles. However, it was apparent in the negotiations that the exact meaning of that expression was not clear. While the expression “sound commercial principles” has not been defined in the requisite legal instruments, it is imperative that the Council seek to determine what it understands by it, so that the joint venture may be formed with the object and purpose of the Convention and the 1994 Agreement in mind. Notwithstanding the failure to define this important criterion, it is suggested that the concept be understood taking into consideration the following factors:

(a) The fundamental overarching principle governing the utilization of the resources in the Area that the resources of the Area are the common heritage of mankind;

(b) The autonomy of the Enterprise in making effective commercial decisions without political interference;

(c) Cost-effectiveness, meaning that the Enterprise should be in a position to generate enough revenue to finance its running costs and run its operations efficiently without the need to be subsidized by members of the Authority;

(d) The adoption of an evolutionary approach with regard to the operation of the Enterprise as far as, for example, its staffing, initial operation and accommodation are concerned;

(e) Commercial viability, including the soundness of its management structure, the availability of technology critical to its structure and the availability of funds to do the work.

22. An examination of the draft proposal for the joint venture shows that some of the factors that are essential to meeting the requirements of sound commercial principles are included in the proposal and should be developed, with a view to including others.

23. Another matter that the Council should be seized of is the need for a representative of the Enterprise to participate in the meetings of the Assembly and the Council in anticipation of the operationalization of the Enterprise. Under the 1994 Agreement, it is required that an interim Director General be appointed from within the staff of the Authority to oversee the limited functions of the Enterprise as provided

for under the Agreement.² Beyond the fact that no interim Director General has been appointed since the retirement, in 2013, of the staff member who performed the functions associated with that position, when the Enterprise begins to function independently in the event of the successful conclusion of a joint venture, there exists no provision in the rules of procedure of the Assembly or the Council relating to the active participation of a representative of the Enterprise in the meetings of those bodies. Consequently, the rules of procedure of the Assembly and the Council would need to be amended to enable the interim Director General and, eventually, the substantive Director General to participate in the meetings of those organs.

24. In the light of the foregoing and recalling the wish of the Council to have on its agenda a full proposal for a joint venture for consideration at its next session in 2019, the Council is invited:

- (a) To take note of the present report;
- (b) To extend the time frame for the negotiation of the draft proposal to form a joint venture and the development of a business proposal to facilitate the operation of the venture, parts of which have been agreed upon *ad referendum*, with a view to the finalization of the proposal in a timely manner and taking into consideration the expectation of the Council to have a full proposal on its agenda in 2019;
- (c) To agree that, upon its finalization, the proposal for the joint venture should comply with the provisions of section 2 of the annex to the 1994 Agreement and be based on sound commercial principles, so as to enable the Council to adopt a directive concerning the independent operation of the Enterprise, bearing in mind the calls for the operationalization of the Enterprise contained in a note dated 6 July 2018 from the African Group addressed to the secretariat of the Authority, which received cross-regional support during the previous session of the Council;
- (d) To request the Secretary-General to extend the contract and renew the terms of reference of the Special Representative and to provide the requisite funds related to the work of the Special Representative, taking into consideration the need to finalize the joint venture with Poland, allow for the participation of the Special Representative in the negotiations concerning the conclusion of the regulations for the exploitation of minerals in the Area and other related matters connected to the reserved areas and to facilitate discussions with other States, regional groups and other entities on matters related to the operationalization of the Enterprise, in view of the suggestions made in paragraphs 17 and 18 of document [ISBA/19/C/6](#), on the governance arrangements of the Enterprise prior to its independent functioning of the secretariat. Those points, highlighted in paragraphs 16 and 17 of the report of the Secretary-General on considerations relating to a proposal by the Government of Poland for a possible joint-venture operation with the Enterprise ([ISBA/24/C/12](#)), relate to the preservation of the notional independence of the Enterprise and the aim to avoid any conflict of interest arising as a result of the role of the interim Director General, who is to be appointed by the Secretary-General from within the staff of the secretariat, and the need to provide objective advice to the Council, *inter alia*, on matters concerning the operations of the Enterprise during the interim period;
- (e) To initiate a discussion on amendments to the rules of procedure of the Council to take into consideration the participation of the Enterprise.

² In the context of the review of article 154 of the Convention, the Assembly decided, in 2017, that it was not appropriate to appoint an interim Director General at that time, hence the decision of the Secretary-General to appoint a Special Representative for the purpose of compiling the present report.

Enclosure I

**Draft Framework
for
cooperation on the Joint Venture operation
between
Government Plenipotentiary for National Raw Materials Policy of the Republic of
Poland
and
International Seabed Authority Secretary General**

I. PARTIES

**Government Plenipotentiary for National Raw Materials Policy
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Secretary of State in the Ministry of the Environment of the Republic of Poland**

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Secretary General**

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II. BACKGROUND

1. Government Plenipotentiary of the Republic of Poland for National Raw Materials Policy (Government Plenipotentiary) intend to commercially explore the ocean floor for cobalt-rich ferromanganese crusts.
2. The International Seabed Authority (ISA) is an autonomous international organization established under United Nations Convention on the Law of the Sea of 10 December 1982 (*UNCLOS*) and the Agreement relating to the Implementation of Part XI of the UNCLOS of 28 July 1994 (*1994 Agreement*) through which parties to the UNCLOS shall, in accordance with the regime for the Area established in Part XI of UNCLOS and the 1994 Agreement,

organize and control activities in the Area, particularly with a view to administering the resources of the Area.

3. The Enterprise is created only when the ISA Council issues a directive providing for the functioning of the Enterprise independent of the secretariat of the ISA following the approval by the ISA Council of a business proposal for a joint venture based on sound commercial principles (as defined in paragraph 2 of section 2 of the annex to the 1994 Agreement).
4. In accordance with the provisions of article 170 of the UNCLOS and paragraph 1 of section 2 of the annex to the 1994 Agreement, the secretariat of the ISA shall perform the functions of the Enterprise until it begins to operate independently of the secretariat. Such functions include, inter alia, the assessment of approaches to joint venture operations.
5. This draft Framework for cooperation records the basis upon which Government Plenipotentiary and the Secretariat of the ISA, performing the functions of the Enterprise pursuant to section 2 of the annex to the 1994 Agreement, shall agree a business proposal for the formation of a joint venture between the Enterprise and Government Plenipotentiary in respect of the Reserved Areas (Business Proposal) for the purpose of exploring and developing the Reserved Areas. (Joint Venture).
6. If the joint venture fails for any reason, Government Plenipotentiary reserves the exclusive right to resubmit the application to the same Reserved Area jointly with the developing state. This right is due within 2 (two) years of the end of negotiations in scope of establishing JV.

III. EFFECTIVE DATE

7. Effective Date: This draft Framework for cooperation shall be effective and in force on signature by both parties.

IV. PROGRAMME FOR DEVELOPMENT OF BUSINESS PROPOSAL

8. The proposed exploration programme is designed to cover exploration activities for the next fifteen years.
9. I stage of the programme (5 year)
 - (a) geological exploration, environmental surveying, ore processing technology development, and preliminary economic evaluation.
 - (b) selection of sites for more detailed survey during next 5 year stage
 - (c) reporting to ISA
10. II stage of the programme (5 year)
 - (a) survey in the selected sites: exploration, environmental surveying, mining technology development, ore processing technology development and revision of economic evaluation and reporting to ISA .
11. III stage of the programme (5 year)
 - (a) select sites (blocks) for potential exploitation within the identified cobalt crust fields and to identify cobalt crust deposits appropriate for development with a due consideration to the

seabed slope and ruggedness, physical obstacles, physical and mechanical properties of the substrate and other relevant factors, geological documentation and reporting to ISA.

12. The surveys to be carried out each year will be adjusted in accordance with the economic and financial situation, survey progress and the analyses of outcomes of previous 5-year stage.
13. Changing the object of action requires the written consent of both parties to the contract.
14. Government Plenipotentiary and ISA have the exclusive right to manage the result of geological research and the priority right to mine minerals in the area under explore, in accordance with separate regulations.
15. The rights referred to in point 13 may be disposed of or leased by Government Plenipotentiary on the basis of the concluded contract.
16. ISA has the right to share the results of geological surveys upon the consent of Government Plenipotentiary.
17. In the case of the establishing the joint venture operations by ISA with other states or entities, Government Plenipotentiary shall have the right to change the terms of its agreement with ISA in the way not less favorable for Government Plenipotentiary than for these other states and entities in their agreements.
18. Government Plenipotentiary reserves the right not to disclose the research methods used, except as provided for in international law.

V. COSTS

19. Government Plenipotentiary shall bear the risk and any and all costs associated with completing the programmes described in clauses 8 to 10, excluding any costs incurred by the ISA in the ordinary course of holding its annual session of the ISA Council.
20. Government Plenipotentiary estimate of the costs of completing the programmes described in clauses 8 to 10 is as follows:

(...)

21. Government Plenipotentiary shall provide the ISA with an annual report outlining the costs incurred in respect of the programmes described in clauses 8 to 10, which report shall be prepared according to the ISA financial expenditure guidelines.
22. Subject to clause VII, any and all costs incurred by Government Plenipotentiary in connection with the Reserved Areas, undertaking the programs described in clauses 8 to 10 and developing the Business Proposal, shall be credited toward any financial contribution that Government Plenipotentiary may be required to make to the Joint Venture.
23. The Republic of Poland will take up 95% of shares in the project. ISA receives a 5% interest.

VI. COMMUNICATION

24. Government Plenipotentiary and the ISA will maintain regular dialogue during the programs described in clause IV to ensure all parties are fully informed and that any issues that might affect the Joint Venture can be addressed prior to the consideration of the Business Proposal by the ISA Council.

VII. ORIGINAL CONTRACTOR RIGHTS

25. The parties acknowledge and agree that the finalization of the terms of the Joint Venture will trigger an Obligation of the Enterprise under paragraph 5 of section 2 of the annex to the 1994 Agreement to offer the original contractor which contributed the Reserved Areas the right of first refusal to enter into a joint venture agreement.
26. In the event the original contractors which contributed the Reserved Areas exercise such right of first refusal the Enterprise must make it a condition of any joint venture agreement executed between the Enterprise with that original contractor that Minister of the Environment and the Enterprise be reimbursed based on cost multiplied by three for the programs undertaken by Government Plenipotentiary and the Enterprise respectively as described in clauses IV and V Above.

VIII. COMMITMENT TO JOINT VENTURE

27. The ISA agrees to negotiate with Government Plenipotentiary in good faith, and with priority, to develop the Business Proposal and to form the Joint Venture and shall do all things reasonably necessary, to enable the Joint Venture to be formed in a timely manner.
28. In the event any applications are received by the ISA from any third parties in respect of the Reserved Areas prior to the approval of the Business Proposal by the ISA Council, the ISA agrees to deal with such applications in accordance with the provisions of UNCLOS and the 1994 Agreement.
29. Each party shall ensure that its employees, agents and advisers comply with the undertakings in this clause as if they were the relevant party.

IX. CREATING AUXILLIARY UNITS TO IMPLEMENT THE SUBJECT OF THE CONTRACT.

30. The Enterprise branch for the implementation of this undertaking will be registered in Poland as a company of Polish commercial law.
31. All matters related to the organization of the Branch and ongoing projects will be subject to the law of the Republic of Poland and the jurisdiction of Polish courts.
32. Appoints five (five) personal supervisory board of the company, composed of four (four) persons on behalf of the Republic of Poland and one (one) person on behalf of ISA.
33. A 3-person Board composed of two (two) persons from the Plenipotentiary of the Republic of Poland and one (one) person from ISA is appointed.
34. As part of the project management, the Republic of Poland finances 2 (two) jobs, the character of which will be determined by both parties to the contract. The first position will be determined on the day of signing this agreement, the second after signing the joint venture agreement.
35. The amount of salary of persons employed in positions referred to in point 31 and 32, will correspond to the standards of salary in the Republic of Poland.

X. MUTUAL INDEMNITY

36. To the extent permitted under Legislative Requirements, the ISA releases, holds harmless and indemnifies Government Plenipotentiary and its Affiliates and their respective officers, servants, agents and employees from and against all claims, losses, damages, costs, expenses and liabilities in respect of loss or damage to any property and in respect of any injury or death to the officers, servants, agents and employees of the ISA and its Affiliates arising directly or indirectly from the performance by Government Plenipotentiary of its obligations under this Agreement.
37. To the extent permitted under Legislative Requirements, Government Plenipotentiary releases, holds harmless and indemnifies the ISA and its Affiliates and their respective officers, servants, agents and employees from and against all claims, losses, damages, costs, expenses and liabilities in respect of loss or damage to any property and in respect of any injury or death to the officers, servants, agents and employees of Government Plenipotentiary and its Affiliates arising directly or indirectly from the performance by ISA of its obligations under this Agreement.

XI. RESOLUTION OF DISPUTES

38. The parties agree that the law applicable to the resolution of disputes arising from this agreement shall be the law of the Republic of Poland. All disputes are subject to they will be within the jurisdiction of the courts of the Republic of Poland.
39. With the consent of the parties, the possibly disputes may be referred to the arbitration; the place of arbitration in a state not involved in the project forming the subject of this agreement.

XII. CONFIDENTIAL INFORMATION**A) Use and disclosure**

1. Each party (Recipient):
- (a) may use Confidential Information of a Disclosing Party only for the purposes of this Agreement; and
 - (b) must keep confidential all Confidential Information of the other parties (each a Disclosing Party) except:
 - (i) for disclosures permitted under clause XII
 - (c); and (ii) subject to clause XII
 - (d), to the extent (if any) the Recipient is required by law or the rules of any stock exchange to disclose any Confidential Information.
2. Permitted disclosure
- A Recipient may disclose Confidential Information of a Disclosing Party to persons who:
- (a) have a need to know for the purposes of this Agreement (and only to the extent that each has a need to know); and
 - (b) before disclosure
 - (i) in the case of the Recipient's officers and employees, have been directed by the Recipient to keep confidential all Confidential Information of the Disclosing Party; and
 - (ii) in the case of other persons approved in writing by the Disclosing Party, have agreed in writing with the Recipient to comply with substantially the same obligations in respect of Confidential Information of the Disclosing Party as those imposed on the Recipient under this Agreement.

3. Recipient's obligations

A Recipient must:

- (a) ensure that each person to whom it discloses Confidential Information of a Disclosing Party under clause XII(b) complies with a direction given under clause XII(b)(ii); and
- (b) notify the Disclosing Party of, and take all steps to prevent or stop, any suspected or actual breach of a direction given under clause XII(b)(ii).

4. Disclosure by law

If a Recipient is required by law or the rules of any stock exchange to disclose any Confidential Information of a Disclosing Party to a third person (including, but not limited to, government) the Recipient must:

(a) before doing so:

- (i) notify the Disclosing Party; and
- (ii) give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information; and
- (iii) notify the third person that the information is confidential information of the Disclosing Party.

XIII. SCHEDULE 1 – RESERVED AREA

Coordinates and Reserved Area Map

XIV. SIGNATURE PAGE

Government Plenipotentiary
of the Republic of Poland
for National Raw Materials Policy

International Seabed Authority
Secretary General

Non-paper – this draft framework is not an official proposal of the Government of the Republic of Poland – the future final proposal is required to be properly agreed and approved by the respective Polish authorities.

Enclosure II

Draft Joint Venture
between
the Government of the Republic of Poland
and
the International Seabed Authority

I. PARTIES

The Government of the Republic of Poland

Address:

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II. BACKGROUND

1. The Government of the Republic of Poland intends to commercially explore the ocean floor for cobalt-rich ferromanganese crusts.
2. The International Seabed Authority is an autonomous international organization established under United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement relating to the Implementation of Part XI of the UNCLOS of 28 July 1994 through which parties to the UNCLOS shall, in accordance with the regime for the Area established in Part XI of UNCLOS and the 1994 Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area.

3. The Enterprise is operationalized only when the ISA Council issues a directive providing for the functioning of the Enterprise independent of the Secretariat of the ISA following the approval by the ISA Council of a business proposal for a joint venture based on sound commercial principles (as defined in paragraph 2 of section 2 of the annex to the 1994 Agreement).
4. In accordance with the provisions of article 170 of the UNCLOS and paragraph 1 of section 2 of the annex to the 1994 Agreement, the Secretariat of the ISA shall perform the functions of the Enterprise until it begins to operate independently of the Secretariat. Such functions include, inter alia, the assessment of approaches to joint venture operations.
5. This draft Framework for cooperation establishes the basis upon which the Government and the Secretariat of the ISA, performing the functions of the Enterprise pursuant to section 2 of the annex to the 1994 Agreement, shall agree a business proposal for the formation of a joint venture between the Enterprise and the Government in respect of Reserved Area as described in schedule I (Business Proposal) for the purpose of exploring and developing the Reserved Areas (Joint Venture).
6. If the joint venture fails for any reason, the Government reserves the exclusive right to resubmit the application to the same Reserved Area jointly with a developing state. This right is due within 2 (two) years of the end of negotiations in scope of establishing Joint Venture.

III. EFFECTIVE DATE

7. Effective Date: This draft Joint Venture shall be effective and in force on signature by both parties.

IV. PROGRAMME FOR DEVELOPMENT OF BUSINESS PROPOSAL/HEADS OF AGREEMENT

8. The proposed exploration programme of work is designed to cover exploration activities for cobalt-rich ferromanganese crusts in the Reserved Area described in schedule I over the next fifteen years.
9. I. stage of the programme (5 year)
 - (d) geological exploration, environmental surveying, ore processing technology development, and preliminary economic evaluation,
 - (e) selection of sites for more detailed survey during next 5 year stage,
 - (f) reporting to ISA/Special Representative.
10. II. stage of the programme (5 year)
 - (a) survey in the selected sites: exploration, environmental surveying, mining technology development, ore processing technology development and revision of economic evaluation and reporting to ISA.

11. III. stage of the programme (5 year)

(a) select sites (blocks) for potential exploitation within the identified cobalt crust fields and to identify cobalt crust deposits appropriate for development with a due consideration to the seabed slope and ruggedness, physical obstacles, physical and mechanical properties of the substrate and other relevant factors, mining technology development, geological documentation and reporting to ISA.

12. The surveys to be carried out each year will be adjusted in accordance with the economic and financial situation, survey progress and the analyses of outcomes of previous 5-year stages.

13. Changing the programme of work requires the written consent of both parties to the contract.

14. The Government and the Enterprise have the exclusive right to manage the result of geological research and the priority right to mine minerals in the Area under exploration, in accordance with the UNCLOS, the 1994 Agreement and the relevant regulations.

15. The rights referred to in paragraph 14 may be disposed of or leased by the Government on the basis of the concluded contract.

16. The Enterprise has the right to share the results of geological surveys with the consent of the Government.

17. In the case of the conclusion of joint venture operations by the Enterprise with other States or entities, the Government shall have the right to change the terms of its agreement with the Enterprise in a way no less favorable to the Government than in the case of the agreements concluded with these other States and entities.

18. The Government reserves the right not to disclose the research methods used, except as provided for in international law.

V. COSTS

19. The Government shall bear the risks and any and all costs associated with completing the programmes described in clauses 9 to 11, and the personnel described in paragraph 34, excluding any costs incurred by the ISA in the ordinary course of holding its annual session of the ISA Council.

20. The Government estimates of the costs of completing the programmes described in clauses 9 to 11 to be as follows:

(a) 1st stage - ...

(b) 2nd stage - ...

(c) 3rd stage - ...

21. The Government shall provide the [Enterprise/ISA] with an annual report outlining the costs incurred in respect of the programmes described in clauses 9 to 11, which report shall be prepared according to the ISA financial expenditure guidelines.

22. Subject to Clause VII, any and all costs incurred by the Government in connection with the Reserved Areas, undertaking the programs described in clauses 9 to 11 and developing the Business Proposal, shall be credited toward any financial contribution that the Government may be required to make to the Joint Venture.
23. [The Government will take up 95% of shares in the project. ISA receives a 5% interest.]

VI. COMMUNICATION

24. The Government and the [ISA/Enterprise] will maintain regular dialogue during the programs described in clause IV to ensure all parties are fully informed and that any issues that might affect the Joint Venture can be addressed prior to the consideration of the Business Proposal by the ISA Council.

VII. ORIGINAL CONTRACTOR RIGHTS

25. The parties acknowledge and agree that the finalization of the terms of the Joint Venture will trigger an obligation of the Enterprise under paragraph 5 of section 2 of the annex to the 1994 Agreement to offer the original contractor which contributed the Reserved Areas the right of first refusal to enter into a Joint Venture agreement.
26. In the event the original contractors which contributed the Reserved Areas exercise such right of first refusal the Enterprise must make it a condition of any joint venture agreement executed between the Enterprise with that original contractor that the Government and the Enterprise be reimbursed based on cost multiplied by three for the programs undertaken by the Government and the Enterprise respectively as described in clauses IV and V Above.

VIII. COMMITMENT TO JOINT VENTURE

27. The ISA through the Special Representative agrees to negotiate with the Government in good faith, and with priority, to develop the Business Proposal and to form the Joint Venture and shall do all things reasonably necessary, to enable the Joint Venture to be formed in a timely manner.
28. In the event any applications are received by the ISA from any third parties in respect of the Reserved Areas prior to the approval of the Business Proposal by the ISA Council, the ISA agrees to deal with such applications in accordance with the provisions of UNCLOS and the 1994 Agreement.
29. Each party shall ensure that its employees, agents and advisers comply with the undertakings in this clause as if they were the relevant party.

IX. CREATING AUXILLIARY UNITS TO IMPLEMENT THE SUBJECT OF THE CONTRACT

- 30. The Enterprise branch for the implementation of this undertaking will be registered in Poland as a company of Polish commercial law.
- 31. All matters related to the organization of the Branch and ongoing projects will be subject to the law of the Republic of Poland and the jurisdiction of Polish courts.
- 32. Appoints 5 (five) personal supervisory board of the company/Joint Venture, composed of four (four) persons on behalf of the Republic of Poland and one (one) person on behalf of ISA.
- 33. Appoints 3-person Board of the company/Joint Venture composed of two (two) persons from the Government and one (one) person from ISA is appointed.
- 34. As part of the project management, the Government finances 2 (two) jobs, the character of which will be determined by both parties to the Joint Venture. These two jobs will be determined on the day of signing of Joint Venture.
- 35. The amount of salary of persons employed in positions referred to in points 32-34 will correspond to the standards of salary in the Republic of Poland.

X. RESOLUTION OF DISPUTES AND THE GOVERNING LAW

- 36. The parties shall use all reasonable endeavours acting in good faith to resolve any dispute arising from the interpretation and application of the provisions of this agreement through negotiations and other diplomatic means of settlement of disputes.
- 37. With the consent of the parties, any dispute may be referred to arbitration; the arbitration should take place in a state not involved in the project forming the subject of this agreement.
- 38. [The law applicable to the resolution of disputes arising from this agreement and the law governing this agreement shall be the law of the Republic of Poland.]

XI. CONFIDENTIAL INFORMATION

XV. Use and disclosure

Each party (Recipient):

- (a) may use Confidential Information of a Disclosing Party only for the purposes of this Agreement; and
- (b) must keep confidential all Confidential Information of the other parties (each Disclosing Party) except:
 - (i) for disclosures permitted under paragraph 41; and
 - (ii) subject to paragraph 42 to the extent (if any) the Recipient is required by law to disclose any Confidential Information.

39. Permitted disclosure

A Recipient may disclose Confidential Information of a Disclosing Party to persons who:

- (c) have a need to know for the purposes of this Agreement (and only to the extent that each has a need to know); and
- (d) before disclosure
 - (i) in the case of the Recipient's officers and employees, have been directed by the Recipient to keep confidential all Confidential Information of the Disclosing Party; and
 - (ii) in the case of other persons approved in writing by the Disclosing Party, have agreed in writing with the Recipient to comply with substantially the same obligations in respect of Confidential Information of the Disclosing Party as those imposed on the Recipient under this Agreement.

40. Recipient's obligations

A Recipient must:

- (a) ensure that each person to whom it discloses Confidential Information of a Disclosing Party under clause 40 complies with a direction given under paragraph 40 (b)(ii); and
- (b) notify the Disclosing Party of, and take all steps to prevent or stop, any suspected or actual breach of a direction given under paragraph 40 (b)(ii).

41. Disclosure by law

If a Recipient is required by law to disclose any Confidential Information of a Disclosing Party to a third person (including, but not limited to, government) the Recipient must before doing so:

- (a) notify the Disclosing Party;
- (b) give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information; and
- (c) notify the third person that the information is confidential information of the Disclosing Party.

XII. DEFINED TERMS

42. In this Agreement including all of its schedules, the following terms have the following meaning unless the context otherwise requires:

- (a) *1994 Agreement* means the Agreement relating to the implementation of Part XI of UNCLOS,
- (b) *Area* means the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction which are controlled by the ISA,
- (c) *Dispute* means any dispute, disagreement, controversy or claim arising out of or relating to this Joint Venture, or the interpretation or application of provisions of this Joint Venture or the breach, termination or validity thereof, that the parties are unable to resolve by mutual

agreement within a reasonable time, other than any dispute that is a question of the interpretation of Part XI and the Annexes relating thereto of the UNCLOS with respect to activities in the Area,

- (d) *Government* means the Government of the Republic of Poland,
- (e) *ISA* means the International Seabed Authority,
- (f) *Special Representative* means...,
- (g) *UNCLOS* means the United Nations Convention on the Law of the Sea 1982.

XIII. RESERVED AREA

43. The coordinates and the Reserved Area map are included as annex 1 to the Joint Venture.

SIGNATURE PAGE

For the Government
of the Republic of Poland
Authorized Representative

For the International Seabed Authority
Secretary General
Authorized Representative
