



Tonga

SEABED MINERALS ACT 2014

Chapter 46.05

2016 Revised Edition



SEABED MINERALS ACT 2014

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SEABED MINERALS ACT 2014¹

AN ACT TO PROVIDE FOR THE MANAGEMENT OF THE KINGDOM'S SEABED MINERALS, AND THE REGULATION OF EXPLORATION AND MINING ACTIVITIES WITHIN THE KINGDOM'S JURISDICTION OR UNDER THE KINGDOM'S CONTROL OUTSIDE OF NATIONAL JURISDICTION, IN LINE WITH THE KINGDOM'S RESPONSIBILITIES UNDER INTERNATIONAL LAW

Commencement [25th August, 2014]²

PART I - PRELIMINARY

1 Short Title

This Act may be cited as the Seabed Minerals Act 2014.

2 Interpretation

(1) For the purpose of this Act the following words shall have the following meanings –

“**Ancillary Operations**” means any activity carried on by or on behalf of a Title Holder under this Act in support of Seabed Mineral Activities (including

travel between port and the Title Area, the establishment and operation of sampling or collecting systems and equipment, platforms, installations, processing facilities, transportation systems and other plant and machinery);

“Applicant” means a person applying for a Prospecting Permit, Licence or Sponsorship Certificate under this Act;

“Application” means an application made by a person to the Authority for a Prospecting Permit, Licence or Sponsorship Certificate under this Act;

“The Area” means the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction as defined under Article 1(1) of the UN Convention on the Law of the Sea;

“Authority” means the Tonga Seabed Minerals Authority established under section 9 of this Act;

“Continental Shelf” means the Kingdom’s seabed and subsoil as defined under Article 76 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 Seabed Mineral Activities;

“EIA Act” means the Environmental Impact Assessment Act 2003 or any Act replacing that Act;

“Environment” has the meaning provided in the EIA Act; namely- it includes all natural, physical and social resources, people and culture and the relationship that exists between these elements;

“Environmental Impact Assessment” has the meaning provided in the EIA Act; namely- the study and evaluation of the potential effects that a development project may have on the Environment;

“Exclusive Economic Zone” means the Kingdom’s marine area as provided for under Part V of the UN Convention on the Law of the Sea;

“Exploration” means -

- (a) the search for Seabed Mineral deposits, including by drilling, with exclusive rights;
- (b) the sampling and analysis of such deposits;
- (c) the testing of systems and equipment;
- (d) the carrying out of studies; and
- (e) for the purpose of investigating whether those minerals can be commercially exploited;

An **“Incident”** occurs when -

- (a) any ship or installation while engaged in Seabed Mineral Activities or Ancillary Operations is lost, abandoned, capsized or incurs significant damage;
- (b) loss of life or injury requiring hospitalisation occurs on board any ship or installation while engaged in Seabed Mineral Activities or Ancillary Operations, 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 Seabed Mineral Activities or Ancillary Operations results in Serious Harm to the Marine Environment;
- (d) the conduct of Seabed Mineral Activities or Ancillary Operations results in the pollution of the Marine Environment in breach of the Kingdom's obligations under international law; or
- (e) where the Seabed Mineral Activities are occurring in the Area, the ISA issues an emergency order in connection with the Seabed Mineral Activities;

“Inspector” means a person appointed by the Authority as an inspector in relation to Seabed Mineral Activities under section 21(3) of this Act;

“The 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 State Parties to the UN Convention on the Law of the Sea shall organise and control Seabed Mineral Activities in the Area;

“Licence” means a written document that is granted under Part 6 of this Act for the purpose of conducting Exploration or Mining under this Act;

“Licensed Area” means a part of the Kingdom's seabed in respect of which there is in force an Exploration or Mining Licence;

“Licensee” means any person to whom an Exploration or Mining Licence is issued under Part 6 of this Act, that person's representatives, and any person or persons to whom the Title conferred by the Licence may lawfully have been transferred, mortgaged, leased or otherwise assigned;

“Marine Environment” means the environment of the sea, and includes the physical, chemical, geological and biological and genetic components, conditions and factors which interact and determine the productivity, state, condition and quality of the marine ecosystem, the waters of the seas and oceans and the airspace above those waters, as well as the seabed and ocean floor and subsoil thereof;

“Marine Reserve” has the meaning given in the Parks and Reserves Act or any Act replacing that Act;

“Marine Scientific Research” means any study, research or other related scientific activity, whether fundamental or applied, intended to increase knowledge about the Marine Environment for the benefit of all mankind, and not undertaken directly for industrial or economic purposes, and not significantly altering the surface or subsurface of the deep seabed nor significantly affecting the Marine Environment;

“Mining” means the recovery for commercial purposes of Seabed Minerals and the extraction of minerals therefrom, including the construction and operation of mining, processing and transportation systems, for the production and marketing of metals;

“Minister” means the Minister responsible for the Kingdom’s Seabed Minerals;

“Ministry” means the Ministry responsible for the Kingdom’s Seabed Minerals;

“Person” means any natural person or group of natural persons, or legal person or business enterprise and includes, but is not limited to a company, corporation, partnership, cooperative, or association;

“The Precautionary Approach” the precautionary approach, in accordance with Principle 15 of the 1992 Rio Declaration on Environment and Development, means that, in order to protect the environment, where there are threats of serious and irreversible damage to the Marine Environment or threats to human health in the Kingdom, a lack of full scientific certainty regarding the extent of adverse effects shall not be used as a reason for postponing cost-effective measures to prevent or minimise environmental degradation arising in any way from a matter or person or activity regulated under this Act;

“Prescribed” means prescribed by Regulations or other subordinate legislation made under this Act or other applicable Act;

“Prospecting” means low impact exploration activities such as seismic surveying and other non-surface disturbing activities in the search for Seabed Mineral deposits, including estimation of the composition, size and distribution of deposits and their economic values, without any exclusive rights;

“Prospecting Permit” means a written document that is granted under Part 5 of this Act for the purpose of allowing the conduct of Prospecting within the Exclusive Economic Zone of Tonga pursuant to this Act;

“Prospectors” means a person to whom a Prospecting Permit is granted under Part 5 of this Act, that person’s representatives, and any person or

persons to whom the Title conferred by the Prospecting Permit may lawfully have been assigned;

“Protected Area” means any area or areas within the Kingdom established as a protected area within the meaning of the Convention on Biological Diversity (opened for signature at the Earth Summit in Rio de Janeiro on 5 June 1992, entered into force on 29 December 1993, and to which Tonga acceded in 1998);

“Public Official” has the meaning provided in section 2 of the Anti-Corruption Commissioner Act 2007;

“Regulations” means all regulations and other subordinate legislation made under this Act;

“Rules of the ISA” means any rules, regulations, guidance to contractors, or procedures adopted by the ISA pursuant 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 any contractual terms contained in a contract between the ISA and a Sponsored Party relating to Seabed Mineral Activities;

“Seabed Minerals” means the hard mineral resources of any part of the deep seabed, including those in crust, nodule or hydrothermal deposit form, which contain (in quantities greater than trace) metalliferous or non-metalliferous elements;

“Seabed Mineral Activities” means -

operations for Prospecting under Prospecting Permit, Exploration under Exploration Licence, or Mining under Mining Licence, of Seabed Minerals within the Kingdom’s national jurisdiction; or

Exploration or Mining of Seabed Minerals in the Area under the Kingdom’s sponsorship, under this Act;

“Serious Harm” means any effect that represents a significant adverse change that cannot be remedied within a reasonable timeframe;

“Sponsored Party” means a person who holds a current Sponsorship Certificate validly issued by the Kingdom under Part 7 of this Act, that person’s representatives or officers, and any person or persons to whom the Sponsorship Certificate may lawfully have been assigned;

“Sponsorship Certificate” means a written document issued to another person under Part 7 of this Act by the Kingdom that validates the Kingdom’s sponsorship of that person pursuant to this Act;

“Sponsoring State” means a State Party to the UN Convention on the Law of the Sea, sponsoring a person to carry out Exploration or Mining in the Area in

accordance with Article 153(2)(b) of the UN Convention on the Law of the Sea;

“**Title**” means the rights conferred by a Prospecting Permit, Licence, or Sponsorship Certificate under this Act;

“**Title Area**” means the area of seabed to which a Title relates;

“**Title Holder**” means a Prospector, Licensee or Sponsored Party; and

“**The 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, and 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 – to which Tonga acceded in 1995.

- (2) This Act shall where possible be interpreted, and all persons performing functions and duties or exercising powers under it shall act, subject to any Act of the Kingdom to the contrary, consistently with the Kingdom’s international obligations under the UN Convention on the Law of the Sea, and other relevant international instruments, and specifically the Kingdom’s duties to -
- (a) protect and preserve the Marine Environment and rare or fragile ecosystems and habitats;
 - (b) prevent, reduce and control pollution from seabed activities, or caused by ships or by dumping of waste and other matter at sea;
 - (c) prevent trans-boundary harm;
 - (d) conserve biodiversity;
 - (e) apply the Precautionary Approach;
 - (f) employ best environmental practice;
 - (g) conduct prior Environmental Impact Assessment of activities likely to cause Serious Harm to the Marine Environment; and
 - (h) take measures for ensuring safety at sea.
- (3) In particular, in determining whether to grant a Prospecting Permit, Licence or Sponsorship Certificate, setting the terms of that Title, taking steps to monitor or to enforce those terms, the Authority shall have regard at all times to the duties listed in sub-section (2) as well as the importance of the Kingdom’s sustainable economic development; and the Authority shall consider any representations made to it concerning such matters.

3 Act to bind the Crown

This Act shall bind the Crown.

4 Ownership of Seabed Minerals within national jurisdiction

All rights to the mineral resources contained in- the waters superjacent to the seabed, the seabed, and subsoil of the Kingdom's territorial sea, Exclusive Economic Zone and Continental Shelf are hereby vested in the Crown to be managed on behalf of the people of the Kingdom, in accordance with the provisions of this Act.

5 Objects of this Act

The objects of this Act are –

- (a) to establish a legal framework and domestic and international investment environment for the development of the Kingdom's Seabed Minerals;
- (b) to establish a legal framework for, and the efficient control of, contractors sponsored by the Kingdom to undertake Seabed Mineral Activities in the Area;
- (c) to ensure that Seabed Mineral Activities within the Kingdom's national jurisdiction, or under the Kingdom's sponsorship in the Area, are carried out according to best international practice, and in a manner that is consistent with internationally accepted rules, standards, principles and practices, including the Kingdom's responsibilities under the UN Convention on the Law of the Sea, and specifically the Kingdom's duty to protect and preserve the Marine Environment;
- (d) to promote transparency in decision-making on matters concerning the Kingdom's management of Seabed Minerals within its jurisdiction or under its sponsorship in the Area;
- (e) to secure economic development of the Kingdom through the development of its Seabed Mineral sector;
- (f) to secure optimum benefit to the Kingdom from Mining and to implement measures to maximise the benefits of Seabed Mineral Activities for present and future generations of Tongans.

6 Operation of this Act

In order to achieve its objects, this Act inter alia –

- (a) creates a regulatory system and designates a responsible Authority to license, monitor and manage the Kingdom's involvement with Seabed Mineral Activities;
- (b) establishes a system for the application for, and grant of Titles under which Title Holders will be authorised to engage in Seabed Mineral Activities under specific and enforceable conditions;
- (c) creates a register of Titles and provides for the registration of dealings and interests in Titles;
- (d) creates offences in respect of activities carried out in breach of the provisions of this Act;
- (e) provides for the protection of the Marine Environment during the conduct of Seabed Mineral Activities, including through the application of the provisions of the EIA Act relating to Environmental Impact Assessment and project permitting;
- (f) provides for the Kingdom to receive payments for its Sponsorship of Seabed Mineral Activities in the Area.

7 Application of Act

- (1) This Act applies to –
 - (a) all individuals, whether or not citizens of or resident in the Kingdom; and
 - (b) all bodies corporate, whether or not incorporated or carrying on business in the Kingdom.
- (2) This Act shall regulate the Prospecting, Exploration and Mining of the Kingdom's Seabed Minerals, and the Sponsorship by the Kingdom of Exploration and Mining of Seabed Minerals in the Area.
- (3) This Act does not apply to the exploration for or recovery of petroleum.

8 Jurisdiction

By the enactment of this Act the Kingdom -

- (a) exercises its exclusive sovereign rights over its Exclusive Economic Zone and Continental Shelf for the purpose of exploring and mining its natural resources (including its minerals);
- (b) recognises -

- (i) the seabed resources of the Area to be the common heritage of mankind;
 - (ii) that rights to the Area are governed by the Rules of the ISA;
 - (iii) that Seabed Mineral Activities in the Area shall be carried out in association with the ISA only by State Parties to the UN Convention on the Law of the Sea, State enterprises, or by persons sponsored by Sponsoring States; and
 - (iv) 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 -
 - (aa) process applications for approval of plans of work for exploration and mining in the Area;
 - (bb) monitor compliance with plans of work, approved in the form of a contract, including through a staff of inspectors;
 - (cc) adopt rules, regulations and procedures necessary for the conduct of exploration and mining in the Area, including for the -
 - (i) protection and preservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the Marine Environment; and
 - (ii) prevention, reduction and control of pollution and other hazards to the Marine Environment;
 - (v) the responsibility of State Parties to the UN Convention on the Law of the Sea including the Kingdom to assist the ISA in exercising its duties outlined in section 8(b)(iii) of this Act;
 - (vi) where the Kingdom is a Sponsoring State, the Kingdom's duty is to effectively control any person engaged in Seabed Mineral 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; and
- (c) exercises its jurisdiction over Tongan subjects and vessels, and foreign persons and vessels otherwise subject to the Kingdom's effective control, engaged in activities of Exploration for, and Mining of, the resources of the Kingdom and the Area, in accordance with generally accepted principles of international law recognized by the Kingdom.

PART 2 - THE TONGA SEABED MINERALS AUTHORITY

9 Establishment of the Tonga Seabed Minerals Authority

- (1) There is hereby established an authority to be known as the Tonga Seabed Minerals Authority (in this Act referred to as ‘the Authority’).
- (2) The Authority is the Minister, assisted by the Chief Executive Officer, Ministry personnel or staff employed by him under this Part of this Act.

10 Authority

The Authority -

- (a) shall perform its functions on behalf of the Crown;
- (b) may appoint a Chief Executive Officer and other staff as it may determine expedient for the implementation of this Act, on terms and conditions of service such as the Authority may determine with the approval of Cabinet; and
- (c) shall report to Parliament through the Minister.

11 Objectives of the Authority

The Authority has the following objectives-

- (a) The compliance objective - to maintain effective control of Seabed Mineral Activities, by securing compliance by Prospectors, Licensees and Sponsored Parties with their obligations under this Act;
- (b) The national interest objective - to promote the conduct of Seabed Mineral Activities to maximise benefits to the Kingdom and the people of Tonga;
- (c) The protection objective -
 - (i) to protect and preserve the Marine Environment; and
 - (ii) to protect the well-being of individuals and communities insofar as may be impacted by or employed in Seabed Mineral Activities;
- (d) The accountability objective – to provide a stable, transparent and accountable regime within the Kingdom for the Permitting, Licensing and Sponsorship of Seabed Mineral Activities.

12 Functions of the Authority

- (1) To ensure the implementation of this Act, the Authority has the following functions, to -
 - (a) develop policies for the purpose of regulating and monitoring the development of the Tongan Seabed Minerals sector;
 - (b) manage the designation and allocation of Titles, and maintain records of Titles granted and the blocks or cells of seabed to which they relate;
 - (c) develop standards and guidelines for Seabed Mineral Activities, and provide advice and guidance in relation to Applications, Titles, Seabed Mineral Activities and associated matters;
 - (d) conduct due diligence enquiry into Applicant Prospectors, Licensees or Sponsored Parties;
 - (e) receive and evaluate Applications to conduct Seabed Mineral Activities under the Kingdom's control or sponsorship;
 - (f) review or obtain a review of Environmental Impact Assessments for Seabed Mineral Activities required under this Act and the EIA Act;
 - (g) recommend to Cabinet whether or not Seabed Mineral Activities are to be permitted, and on what terms;
 - (h) prepare Prospecting Permits, Licences and Sponsorship Certificates;
 - (i) receive and assess reporting documents from Title Holders;
 - (j) monitor the performance and impact of Seabed Mineral Activities, and compliance by Title Holders with the terms of this Act, any Regulations made under this Act, and the relevant Title;
 - (k) monitor the continuing validity of the terms of a Title;
 - (l) effect the amendment of the terms of a Title where expedient, and in accordance with this Act;
 - (m) enforce sanctions for non-compliance with this Act, Regulations made under this Act, or a Title;
 - (n) require and review relevant reports and information from Title Holders, and maintain appropriate records, pertaining to Seabed Mineral Activities;
 - (o) share information and consult about Seabed Mineral Activities with the general public as appropriate;
 - (p) publish and submit to Parliament an annual report of Seabed Mineral Activities not later than ninety days after the end of each calendar year;

- (q) provide technical assistance to other Government agencies of the Kingdom in all matters relevant to Seabed Minerals;
 - (r) liaise with the ISA and any other relevant international organisation in accordance with the UN Convention of the Law of the Sea to facilitate the lawful conduct of Seabed Minerals Activities or the protection of the Marine Environment;
 - (s) seek expert advice on factual matters pertaining to the administration of this Act and concerning the management of the Kingdom's Seabed Minerals, including but not limited to advice on economic, legal, scientific, and technical matters, and including advice from experts in the management and conservation of the Marine Environment;
 - (t) appoint such persons appearing to the Authority to be qualified based on their expertise for the purpose, to assist in the discharge of its functions and generally in the execution of this Act, as is considered appropriate from time to time.
- (2) The Authority may make to any person appointed under sub-section (1)(s) or (t), who is not already within the employ of the Authority such payments by way of remuneration as the Minister may determine, in consultation with the Remuneration Authority and with the approval of Cabinet.
- (3) Nothing in this section shall permit the Authority or Cabinet to delegate to third parties its power to take and approve the decisions listed in section 18 of this Act.

13 Duties of the Authority

In performing its functions the Authority shall so far as is reasonably practicable act in a way which is compatible with -

- (a) the principles contained in section 2(2) of this Act;
- (b) meeting its objectives contained in section 11 of this Act;
- (c) the encouragement of investment in and performance of Seabed Mineral Activities in the Kingdom's jurisdiction or under its sponsorship;
- (d) the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed); and
- (e) such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

14 Powers of the Authority

The Authority may take any action which is reasonably calculated to facilitate, or is conducive or incidental to, the performance of any of its functions or duties under this Act.

15 Information Order

- (1) In performing its functions, and subject to the provisions of this Act, the Authority may gather, retain and publish or disseminate information relating to any Application, Title, Seabed Mineral Activities or Ancillary Operations.
- (2) The Authority shall not disclose information that it receives in relation to Seabed Mineral Activities unless –
 - (a) the relevant Licensee or Applicant consents;
 - (b) the information is not information about a Licensee's technical specifications or financial resources, confidential information contained in a Licence Application, a trade secret, or information the disclosure could reasonably be expected to adversely affect the person's business, commercial or financial affairs; and
 - (c) the disclosure is made by order of the court.
- (3) The Authority may by Order require any person to furnish it within a reasonable time with any information it reasonably believes is in that person's possession which relates to any Title, Seabed Mineral Activities or Ancillary Operations and is relevant to the discharge of the Authority's functions.
- (4) The Authority may by Order summon a Title Holder or its authorised representative, for the purposes of furnishing information under subsection (3).
- (5) Any person who fails to comply with an Order made under this section without reasonable justification commits an offence.
- (6) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$100,000.

16 Supply of false or misleading information to the Authority

- (1) Any person who knowingly or recklessly provides the Authority with information which is false or misleading in a material particular commits an offence if the information —

- (a) is provided in purported compliance with a requirement imposed by or under this Act; or
 - (b) is provided otherwise than as mentioned in sub-section (1)(a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Authority for the purpose of discharging their functions under this Act.
- (2) Any person who wilfully alters, suppresses, conceals or destroys any document which he is or is liable to be required, by or under this Act, to produce to the Authority commits an offence.
- (3) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$150,000.

17 Preparation of guidelines

The Authority may from time to time publish and disseminate procedures, standards, manuals, recommended practices and guidelines of a technical or administrative nature relating to Seabed Mineral Activities or to assist Title Holders, Government agencies, and other interested parties in the implementation of the Act and the Regulations, including by reference to any recommendations of any organ of the International Seabed Authority.

18 Record of decisions

- (1) The Authority will keep written records of decisions (and the grounds for them) taken under the following sections of this Act -
- (a) 15 (Information Order);
 - (b) 23 (Enforcement Order);
 - (c) 42 (Provision of Prospecting Permit);
 - (d) 44 (Denial of Prospecting Permit);
 - (e) 50 (Issue or Denial of Licence);
 - (f) 73 (Variation, Suspension or Revocation of Licence);
 - (g) 77 (Entry into Sponsorship of Seabed Mineral Activities in the Area); and
 - (h) 88 (Variation, Suspension or Revocation of Sponsorship Certificates).

- (2) A record kept under this section, and that is signed by the Minister, or on behalf of the Authority by the Chief Executive Officer, is prima facie evidence that the decision was duly made as recorded.

19 Monitoring

The Authority will monitor and verify Title Holders' performance and adherence to this Act, Regulations made under this Act, and Title, and any conditions arising from an Environmental Impact Assessment where required, with particular regard to progress with Seabed Mineral Activities, and the impacts of Seabed Mineral Activities on the Marine Environment, other sea users, bordering States, or the people of the Kingdom.

20 Incidents and Inquiries

- (1) Where an Incident occurs in respect of a Seabed Mineral Activity under the Sponsorship of the Kingdom, the Sponsored Party shall inform the ISA and copy all information provided to the ISA to the Authority. For the purposes of this section an Incident shall (without limitation) be deemed to have occurred when -
- (a) any ship or installation while engaged in Seabed Mineral Activities or Ancillary Operations is lost, abandoned, or damaged;
 - (b) loss of life or injury requiring hospitalisation occurs on board any ship or installation while engaged in Seabed Mineral Activities, or Ancillary Operations, except in the case of a loss of life that is certified by a medical practitioner not affiliated with the Title Holder, Seabed Mineral Activities or Ancillary Operations as being the result of natural causes;
 - (c) the conduct of Seabed Mineral Activities or Ancillary Operations results in Serious Harm to the Marine Environment; or
 - (d) the conduct of Seabed Mineral Activities or Ancillary Operations results in the pollution of the Marine Environment in breach of the Kingdom's obligations under international law.
- (2) A Title Holder involved in an Incident shall report it to the Authority in accordance with section 39 of this Act, and shall respond efficiently and responsibly to the Incident, including by seeking and following the Authority's instructions, or the ISA's instructions where relevant.
- (3) The Authority may hold, or may commission, inquiries into Incidents.

- (4) The Authority shall provide such administrative assistance to a Title Holder as is expedient to facilitate the Title Holder's efficient response to an Incident.

21 Delegation of Powers

- (1) In performing its functions the Authority shall seek expert advice on factual matters pertaining to the administration of this Act and concerning the management of the Kingdom's Seabed Minerals, including but not limited to advice on economic, legal, scientific, and technical matters, and including advice from experts in the management and conservation of the Marine Environment, at all times where such advice is required and is reasonably available.
- (2) The Authority, may appoint such persons appearing to the Authority to be qualified based on their expertise for the purpose, to assist in the discharge of its functions and generally in the execution of this Act, as is considered appropriate from time to time.
- (3) The Authority may in particular appoint such persons appearing to the Authority to be qualified for the purpose as Inspectors, to assist with the Authority's monitoring and compliance function.
- (4) The Authority may make to any person appointed under sub-sections (2) or (3), who is not already within the employ of the Authority such payments by way of remuneration as it may determine, in consultation with Remuneration Authority and with the approval of Cabinet.
- (5) Nothing in this section shall permit the Authority and Cabinet to delegate to third parties its power to delegate its other powers, or its power to take and approve the decisions listed in section 18 of this Act.

22 Inspectors' Powers

- (1) Any person appointed by the Authority as an Inspector under section 21(3) of this Act, shall, if reasonably necessary for the purpose of determining compliance with this Act, be entitled at all reasonable times and with reasonable notice to a Title Holder to—
 - (a) board or obtain access to the Licence Area or Contract Area and all parts of any premises, vessel or equipment used for or in connection with Seabed Mineral Activities;
 - (b) inspect or test any machinery or equipment that in the Inspector's opinion is being or is intended to be used for the purposes of Seabed

- Mineral Activities and, if the Inspector deems fit, to dismantle, test to destruction or take possession of any such machinery or equipment;
- (c) remove any samples or assays of such samples from any vessel or equipment used for or in connection with Seabed Mineral Activities;
 - (d) examine and take copies of books, accounts, documents or records of any kind required to be kept under this Act, Regulations, and the Title;
 - (e) require the Title Holder to carry out such procedures in respect of any equipment used for or in connection with Seabed Mineral Activities as may be deemed necessary by the Authority;
 - (f) document any site visit or inspection activity using any reasonable means including video, audio, photograph or other form of recording;
 - (g) upon written authorisation from the Authority, perform any other functions of the Authority as its representative, including the issue of Orders under sections 15 (Information Order) and 23 (Enforcement Order) of this Act; and
 - (h) conduct any additional actions as prescribed.
- (2) An Inspector shall take all reasonable steps to avoid- expending excessive time on a Title Holders' vessel or platform at-sea, disruption of Seabed Mineral Activities, or interference with the safe and normal operations on board vessels.
 - (3) A Title Holder and its officers and agents shall make best endeavours to co-operate with the reasonable requests and exercise of powers by an Inspector.
 - (4) The wilful obstruction by any person of the work of an Inspector, or the failure by a Title Holder or its officer or agent to comply with sub-section (3), commits an offence.
 - (5) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$100,000.

23 Enforcement Order

- (1) The Authority (including authorised officers) may decide to issue an Enforcement Order requiring corrective action in relation to a suspected, observed or anticipated contravention of this Act, Regulations made under this Act, or a term of a Title, or in respect of any suspected, observed or anticipated circumstance that presents or would present a risk to life or a risk of Serious Harm to the Marine Environment.
- (2) An Enforcement Order made under this section may in reasonable terms –

- (a) require a person to-
 - (i) take corrective action;
 - (ii) stop taking harmful action; or
 - (iii) pay money to another person to cover reasonable costs incurred due to failure to comply; and
 - (b) include a mandatory timeframe for the required action or inaction.
- (3) Failure to comply with an Enforcement Order made under this section shall be an offence.
- (4) It is a defence for a person charged with an offence under sub-section (3) to prove that he took all reasonable steps within his control for securing that the required action or inaction would be complied with in time.
- (5) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$250,000.

24 Action by the Authority if holder fails to comply with Enforcement Order

The Authority may do all or any of the corrective actions required by an Enforcement Order made under section 23 of this Act if –

- (a) the time for compliance specified has ended; and
- (b) the person to whom the Enforcement Order was given or to whom it extended has not complied with the Order.

25 Costs incurred by the Authority in taking enforcement action

If the Authority takes corrective action under section 24 of this Act in relation to an Enforcement Order, the reasonable costs and expenses incurred by the Authority in taking that action are a debt due to the Authority by the person or persons whose failure to comply with the Order led to that action, which is recoverable in a court of competent jurisdiction.

26 Failure to comply with an Enforcement Order grounds for revocation of Title

A failure to comply with an Enforcement Order by a person holding a Title under this Act, may constitute grounds for the Authority to vary, suspend, or revoke that Title by notice in writing served upon the Title Holder in accordance with this Act.

27 Administrative Action

- (1) The Authority may take any one or more of the administrative actions in sub-section (2) in respect of a Title Holder, upon the Authority reasonably determining that the Title Holder has materially breached-
 - (a) a condition or term of its Title; or
 - (b) a requirement of the Act, Regulations or other law of the Kingdom.
- (2) Administrative actions that the Authority may take in accordance with sub-section (1) are to -
 - (a) issue written warnings, including warnings in relation to possible action the Authority may take in the event of future breaches;
 - (b) enter into a written agreement providing for the Title Holder to undertake a programme of remedial action and to mitigate the risk of re-occurrence;
 - (c) issue Enforcement Orders under section 23 of this Act for the Title Holder to prevent, remedy and mitigate the risk of re-occurrence of breaches;
 - (d) impose an administrative penalty not exceeding \$10,000 for each day during which the breach continues;
 - (e) impose temporary restrictions on the Seabed Mineral Activities of the Title Holder until the Authority is satisfied that action has been taken to remedy the breach and to mitigate the risk of re-occurrence;
 - (f) commence a process under section 73 or section 88 of this Act to vary, suspend or revoke the Title, including a variation to impose additional conditions on the Title.
- (3) Action taken under sub-section (2) shall be commensurate with the gravity, frequency and other circumstances of the breach, including the Title Holder's previous conduct under the Title.

PART 3 - AREAS AVAILABLE FOR SEABED MINERAL ACTIVITIES WITHIN TONGA'S NATIONAL JURISDICTION

28 Graticulation of earth's surface

For the purpose of this Act, the surface of the earth is deemed to be divided into graticular sections-

- (a) by the meridian of Greenwich and by the meridians that are at a distance from that meridian of 10 minutes or a multiple of 10 minutes of longitude;
- (b) by the equator and by parallels of latitude that are a distance from the equator of 10 minutes, or a multiple of 10 minutes of latitude; and
- (c) each of which is bounded by-
 - (i) portions of two of those meridians that are at a distance from each other of 10 minutes of longitude; and
 - (ii) portions of two of those parallels of latitude that are at a distance from each other of 10 minutes of latitude.

29 Constitution of blocks

For the purpose of this Act –

- (a) the seabed and subsoil of any such graticular section is a block;
- (b) the position on the surface of the Earth of a block or any other position identified for the purpose of this Act or Regulations, is to be determined by reference to the World Geodetic System (WGS 84); a boundary between points on the surface of the Earth shall be a geodesic; and grid coordinates shall be described in accordance with the Universal Transverse Mercator Grid System.

30 Constitution of cells

For the purposes of this Act the Authority may further divide blocks into smaller divisions, called cells.

31 Release of blocks for Activities

Subject to section 32 of this Act, the Authority may by reference to geographical coordinates designate an area or areas of the Kingdom's Continental Shelf to be released for the purpose of Seabed Mineral Activities or specified types of Seabed Mineral Activities, by reference to a block or blocks, or cell or cells.

32 Reserved areas

- (1) The Authority shall not under section 31 of this Act designate as an area or areas of the Kingdom's Continental Shelf to be released for the purpose of Seabed Mineral Activities any area or part of an area declared to be a Marine Reserve or Protected Area.
- (2) If there is no Title over a particular area of the Kingdom's Continental Shelf, the Authority may, by Gazette Notice declare the area to be a reserved area.
- (3) Areas may be reserved by the Authority for purposes inter alia of marine spatial management, environmental protection, or for tender.
- (4) While a reserved area declaration under sub-section (2) is in force, the Authority shall not tender or grant a Title over any block or blocks contained in that reserved area.

33 Invitation for Licence Applications

The Authority may in any manner it sees fit, invite Applications for Licences by reference to a block or blocks, or cell or cells, including through the public announcement of a tender round to be administered by the Authority, in accordance with prescribed tender procedures.

34 Register of Titles

- (1) The Authority shall retain a register of Titles, containing up-to-date and accurate records of Applications received and Titles granted, which may include a reference map, of which blocks or cells at any time-
 - (a) are subject to Licence Applications, or Licences issued under this Act;
 - (b) are open to Licence Applications; and
 - (c) are areas reserved under section 32 of this Act or within a Marine Reserve or a Protected Area, and so under section 32 of this Act are not open to Licence Applications.

- (2) For every Title granted, the Authority shall enter a record in the register of Titles that shall include at least the following information-
 - (a) the name and registered address of the holder;
 - (b) the date of the grant of the Title;
 - (c) the duration of the Title and expiry date;
 - (d) a description of the area or areas in respect of which the Title is granted;
 - (e) the Seabed Minerals in respect of which the Title is granted; and
 - (f) a description of the Seabed Mineral Activities in respect of which the Title is granted.
- (3) The register of Titles should be amended accordingly in the event of any transfer, renewal, variation, suspension, termination, revocation, expiry or surrender of Title.

35 Register open to public inspection

- (1) The register of Titles maintained by the Authority in accordance with section 34 of this Act shall be open to public inspection during business hours of the Authority.
- (2) If the Authority so determines, sub-section (1) shall not apply to any particular information where the information is commercially sensitive information pertaining to a third party such as exploration data, or where the publication of that particular information would in the Authority's view otherwise not be in the public interest such as personal addresses of Title Holder personnel.
- (3) The Authority may upon application and payment of a prescribed fee issue a certified copy of any Title or other document filed with the Authority for the purpose of maintaining the register of Titles, which will be admissible in evidence in any court.

36 Regulations for prescribing maximum areas to be held under Licence

The Minister may prescribe by Regulations maximum areas that may be held under any one Exploration or Mining Licence, or by any one person or company at any one time.

PART 4 - DUTIES AND RESPONSIBILITIES OF INDIVIDUALS

37 Prohibited Activities

- (1) No person may engage in any Seabed Mineral Activities unless, and only insofar as, authorised to do so under a Title issued under this Act.
- (2) The prohibitions of sub-section (1) shall not apply to Marine Scientific Research.
- (3) Any person who contravenes sub-section (1) commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000,000 and any Seabed Minerals or other products, or proceeds obtained as a result of actions prohibited by sub-section (1) shall be forfeited to the Crown.

38 Adherence to laws and rules

- (1) Any person engaging in Seabed Mineral Activities under a Title is required, inter alia, to -
 - (a) adhere to the provisions in each case in force from time to time; of -
 - (i) the Marine Pollution Prevention Act 2002;
 - (ii) the EIA Act and any regulations made under it, including but not limited to the Environmental Impact Assessment Regulations 2010;
 - (iii) the Environment Management Act 2010;
 - (iv) this Act, and Regulations made under this Act;
 - (v) the terms and conditions of the Title permitting the Seabed Mineral Activities;
 - (vi) any environmental conditions arising from the Environmental Impact Assessment process.
- (2) Any Sponsored Party engaging in Seabed Mineral Activities is required to adhere to the provisions of the Rules of the ISA, this Act, Regulations made under this Act, and the terms of any Sponsorship Certificate issued under Part 7 of this Act.

39 Title Holders' Duties

- (1) In addition to terms and conditions contained in the individual Title, all Title Holders shall -
 - (a) adhere to the provisions in force from time to time of any other applicable legal instruments, laws of the Kingdom, including (without limitation) laws relating to the safety of life at sea and vessel standards;
 - (b) employ best environmental practice in accordance with prevailing international standards;
 - (c) if the Authority advises in writing that it considers there are threats of serious and irreversible damage to the Marine Environment or threats to human health in the Kingdom, apply the Precautionary Approach;
 - (d) in order to avoid, remedy, or mitigate the adverse effects of Seabed Mineral Activities on the Marine Environment;
 - (e) take necessary steps to prevent, reduce and control pollution and other hazards to the Marine Environment, including waste material, arising from Seabed Mineral Activities;
 - (f) 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 Seabed Mineral Activities, or otherwise satisfy the Authority of its financial and technical capability to respond to potential Incidents;
 - (g) cooperate in capacity-building of personnel of the Kingdom in connection with Marine Scientific Research, Seabed Mineral Activities, and related transfer of technology, including providing opportunities in consultation with the Authority for the participation of representatives of the Kingdom in the Seabed Mineral Activities;
 - (h) provide sufficient training, supervision and resources to employees, agents or officers, to ensure compliance with this Act;
 - (i) carry out the Seabed Mineral Activities lawfully, with due diligence and efficiency, and within reasonable time limits;
 - (j) where the Seabed Mineral Activities or Ancillary Operations would constitute a Major Project for the purposes of the EIA Act, conduct an Environmental Impact Assessment, and not proceed with Licensed activities, unless and until appropriate approval under the EIA Act has been obtained;
 - (k) exercise proactive due diligence in, and comply with the terms of the Title directed at, safeguarding the health, safety and welfare of persons

- employed in the Seabed Mineral Activities and in any Ancillary Operations;
- (l) if marine or coastal users likely to be adversely affected by the Seabed Mineral Activities are identified by the Authority or the Title Holder at any time, including through the Application and Environmental Impact Assessment processes, obtain free and prior informed consent, including by way of compensation, from those persons prior to commencing the Seabed Mineral Activities;
 - (m) maintain, separately for each Title, a complete and proper set of books, accounts, financial records, and performance data consistent with internationally accepted accounting practices, which are annually audited by an independent auditor, and in the case of a Mining Licensee, which are sufficient to determine the amount of royalties, fees or taxes that may be payable under any Act, and supply such of that data to the Authority in the format and at such times as may be required;
 - (n) not amend, alter or vary without the prior and informed written consent of the Authority (which is not to be unreasonably withheld) the work plan contained in the Title;
 - (o) submit to the Authority immediately in writing notice of any new information arising or data collected that materially affects the work plan or the Title Holder's ability to adhere to the terms of the Title;
 - (p) submit to the Authority immediately by telephone and in writing notice of any Incident arising from the Seabed Mineral Activities or Ancillary Operations;
 - (q) not proceed or continue with the Seabed Mineral Activities without obtaining prior written consent from the Authority to proceed, if evidence arises that to proceed is likely to cause Serious Harm to-
 - (i) the Marine Environment that was not anticipated in any Environmental Impact Assessment previously conducted;
 - (ii) to the safety, health or welfare of any person; or
 - (iii) to other existing or planned legitimate sea uses including but not limited to Marine Scientific Research;
 - (r) in the case of a Mining Licence and for any period during which Seabed Minerals are being mined, submit to the Authority a periodic and no less than quarterly report any form prescribed providing information about the volume of work performed and quantity and quality of Seabed Minerals mined;

- (s) submit to the Authority within 30 days of the end of each calendar year a written annual report in a format to be prescribed or described in the Title, which in the case of a Mining Licence shall include-
 - (i) information on the results of Mining operations, health and safety record, volume of work, quantity and quality of Seabed Minerals mined, waste and waste disposal, rehabilitation activities;
 - (ii) statement of expenditures, costs and persons employed;
 - (iii) estimate of remaining Seabed Mineral deposit within the Licence Area; and
 - (iv) statement showing the amount of royalty determined to be payable for each reporting period together with all related information and calculations, and receipt showing that the royalties have been paid in accordance with the laws of the Kingdom;
- (t) provide the Authority with all reasonable information and assistance to enable the Authority's verification of the Title Holder's adherence to its obligations in performing the Seabed Mineral Activities and Ancillary Operations;
- (u) at the end of the Title term or upon earlier suspension, revocation or surrender of the Title, remove all installations, equipment and materials in the Title Area, so as to ensure that the Title Area does not constitute a danger to persons, shipping or the Marine Environment; and provide a final report including information on the rehabilitation of the Title Area;
- (v) obtain any other permits, approval, certification or other documentation required under the laws of the Kingdom for the lawful operation of the Title Holder in the Kingdom's territory or under the Kingdom's sponsorship in the Area and in performing the Seabed Mineral Activities;
- (w) at all material times, ensure that-
 - (i) any vessels, installation and equipment engaged in Seabed Mineral Activities are in good repair and comply with the laws of the flag state and applicable international shipping conventions;
 - (ii) working conditions for personnel engaged in Seabed Mineral Activities meet applicable employment rules and health and safety standards;

- (x) not dump mineral materials or waste from any vessel except in accordance with international law and the directions of the Authority or – for Seabed Mineral Activities in the Area – the Rules of the ISA.

PART 5 - PROSPECTING PERMITS WITHIN THE KINGDOM'S NATIONAL JURISDICTION

40 Prospecting within the Kingdom's national jurisdiction

Prospecting may be carried out within an area of the Kingdom's Exclusive Economic Zone or upon the Kingdom's Continental Shelf by any person holding a valid Prospecting Permit pertaining to that area.

41 Grant of a Prospecting Permit

A Prospecting Permit may be granted by the Authority upon satisfactory receipt of a properly made application for a Prospecting Permit in the prescribed form and accompanied by the prescribed fees.

42 Prospecting Permit Application

For an application for a Prospecting Permit to have been properly made, for the purposes of section 41 to this Act, the application shall be made to the Authority in writing at least six months before the proposed commencement date of the Prospecting, and shall contain -

- (a) the cruise name and number;
- (b) the name, nationality and address, contact details, and, where relevant evidence of incorporation or registration, of the Applicant, and any other collaborators and participants;
- (c) the name, nationality, address, contact details and certificate of the requisite skills of the officer in charge of the proposed Prospecting activities;
- (d) the co-ordinates and charts of the area or areas within which the proposed Prospecting is to be conducted;
- (e) a general description of the nature and objectives of the proposed Prospecting activities, including the methods and technology to be used, the proposed date of commencement and approximate duration, and the proposed use of the data

collected, including any plans to make the research results internationally available;

- (f) the details of the methods, the equipment, and any installations to be used;
- (g) a preliminary assessment of likely impact on the Marine Environment of the proposed Prospecting;
- (h) the details of any intended ports of call;
- (i) modalities of the participation of a representative of the Kingdom in the Prospecting activities; and
- (j) the expected dates and method of submission to the Kingdom of a preliminary report, a final report, and assessment of data, samples and research results.

43 Timely provision of Prospecting Permit decision

The Authority will provide the Applicant Prospector with -

- (a) a decision to grant a Prospecting Permit;
- (b) a decision to deny a Prospecting Permit; or
- (c) a request for further information,

within 60 days of satisfactory receipt of an Application or of additional information sought by the Authority during the Application process.

44 Denial of a Prospecting Permit

The Authority will not provide a Prospecting Permit where-

- (a) any Application information prescribed under section 42 has not been supplied to the Authority's satisfaction;
- (b) the past performance of the Applicant as the holder of any Title, or equivalent in other jurisdictions, has been materially unsatisfactory to the Authority's knowledge;
- (c) the Permit includes within its scope any part of an area already within the scope of any existing and current Exploration or Mining Licence;
- (d) the terms of the Permit would in the Authority's reasonable opinion be likely to lead to the contravention by any person of conditions or restrictions placed on any Marine Reserve or a Protected Area or cause Serious Harm to the

Marine Environment, human health or safety, or the interests of the Kingdom; or

- (e) the Authority is aware of other grounds that reasonably indicate that the grant of the Prospecting Permit would be contrary to the interests of the Kingdom or contrary to the principles contained in section 2(2) of this Act.

45 Written statement of reasons for and appeal against denial

- (1) A decision by the Authority to deny an Application for a Prospecting Permit shall be accompanied by a written statement of the reasons for that denial.
- (2) An Applicant Prospector who is dissatisfied with the Authority's denial decision may appeal the decision.

46 Conditions of Prospecting Permit

The Authority may grant a Prospecting Permit subject to whatever terms and conditions the Authority thinks appropriate or as may be prescribed.

47 Rights and Obligations of Prospecting Permit

Prospecting -

- (a) does not entail any exclusive rights of access to the seabed or water column, and does not permit extraction of minerals for commercial use;
- (b) may be conducted simultaneously by more than one Prospector in the same area or areas;
- (c) shall cease within a particular area upon written notice being given to the Prospector by the Authority, which may be given where-
 - (i) a Licence or a declaration of a Marine Reserve or Protected Area has been or is about to be issued for that area;
 - (ii) the Prospector breaches any undertaking or requirement pertaining to the Prospecting Permit and fails to remedy the breach within one calendar month of being required to do so by an Enforcement Order;
 - (iii) the Authority reasonably believes that the Prospector has caused, is causing, or poses a threat of, Serious Harm to the Marine Environment or human life;

- (d) may include the recovery of minerals provided this is restricted to the minimum amount necessary for testing, assaying or valuation purposes, and not for commercial use;
- (e) does not entail any right to drill into the Continental Shelf, use explosives; or introduce harmful substances into the Marine Environment;
- (f) includes a reasonable right of access to the Prospecting Permit area;
- (g) does not give ownership or property rights to the Prospector over any Seabed Minerals acquired in the course of Prospecting, such Seabed Minerals remaining the property of the Crown.

48 Obligations of Prospectors

Prospectors shall-

- (a) adhere to the terms and conditions of the Prospecting Permit, this Act, the EIA Act, requirements prescribed by Regulations made under this Act, and any rules or procedures relating to Prospecting issued by the Authority; and
- (b) not proceed with Prospecting if there is evidence indicating that to proceed is likely to cause Serious Harm to the Marine Environment or human life.

PART 6 - LICENSING OF SEABED MINERAL ACTIVITIES WITHIN THE KINGDOM'S NATIONAL JURISDICTION

49 Exploration and Mining within the Kingdom's national jurisdiction

Exploration and Mining may be carried out in an area of the Kingdom's territorial seas, Exclusive Economic Zone or upon the Kingdom's Continental Shelf by any eligible person holding a valid Licence pertaining to that area.

50 Grant and Issue of Licences

- (1) The Authority may at any time receive unsolicited Licence Applications, or may from time to time invite, including by way of a public tender, Applications for a Licence to conduct Seabed Mineral Activities in an area of the Kingdom's Continental Shelf that is not reserved under section 32 of this Act or presently subject to a Title or a pre-existing pending Application for grant of a Title.

- (2) Upon Application to conduct Exploration or Mining in an area of the Kingdom's territorial seas, Exclusive Economic Zone or upon the Kingdom's Continental Shelf, subject to the provisions of this Part of this Act, and following such format, processes, criteria and payments as may further be prescribed, the Authority may take a decision-
 - (a) to grant to an Applicant -
 - (i) an Exploration Licence; or
 - (ii) a Mining Licence;
 - (b) or not to grant any Licence,
with respect to the whole or any part of the blocks or cells that are the subject of the Application.
- (3) The area in respect of which an Exploration or Mining License may be granted shall be a block or blocks but shall not be more than 10 blocks.
- (4) Where an Exploration or Mining License is granted in respect of 2 or more blocks the graticular sections that constitute those blocks –
 - (a) constitute a single area; and
 - (b) each have a side in common with at least one other graticular section in that area.
- (5) A Licence will give the Licensee rights to conduct specified Exploration or Mining activities within the Licence Area, and the Ancillary Operations necessary for the performance of those Seabed Mineral Activities.

51 Content of an Application for a Licence

Applications for a Licence shall contain -

- (a) evidence as to the matters required under section 52 of this Act;
- (b) the coordinates of the area of the Kingdom's territorial seas, Exclusive Economic Zone or Continental Shelf within which the proposed Seabed Mineral Activities will be conducted under Licence;
- (c) any feasibility or other studies previously conducted by the Applicant in relation to the potential of the area of the Kingdom's territorial seas, Exclusive Economic Zone or Continental Shelf within which the proposed Seabed Mineral Activities will be conducted under Licence;
- (d) a preliminary assessment of the possible impact on the Environment of the proposed Activities that are the subject of the Licence Application, and a

- proposal for oceanographic and environmental baseline studies and mitigation strategies for the protection of the Marine Environment and prevention of pollution;
- (e) a proposed Exploration or Mining work plan, covering the life of the proposed Seabed Mineral Activities (including the closure of operations), and including a description of the technology and processes to be used, a time schedule and estimated annual expenditures;
 - (f) a financing plan;
 - (g) a list of employees required to operate the Seabed Mineral Activities;
 - (h) a capacity-building programme providing for the training of personnel of the Kingdom and their participation in matters pertaining to the proposed Seabed Mineral Activities to be conducted under Licence, and an employment strategy for local workers;
 - (i) a public engagement and information plan;
 - (j) the Applicant's plan for responding to any Incidents;
 - (k) the prescribed fees; and
 - (l) any further matters that are prescribed by Regulations.

52 Qualification criteria pertaining to the Applicant

An Application for a Licence will only be considered where the Authority is first satisfied that the Applicant meets prescribed qualification criteria.

53 Restrictions on issue of Licences

The Authority shall not issue a Licence where to do so -

- (a) would give Exploration or Mining rights over an area already included within the scope of any existing Licence valid for any of the same time period – save for the situation where an Exploration Licensee applies for a Mining Licence for part of the area included within the scope of that Licensee's existing Exploration Licence, or that has been retained by the Authority under section 65;
- (b) would be likely to lead to any person contravening a declaration of a Marine Area or Protected Area; or

- (c) would grant Mining rights over an area or part of an area over which an Exploration Licence has been valid within the preceding three years, unless-
 - (i) the Mining Applicant is the same person who held the Exploration Licence pertaining to that area; or
 - (ii) the Mining Application is accompanied by the consent of the person who held that preceding Exploration Licence.

54 Cabinet Consent and Minister Signature for Licences

- (1) Any Licence, to be validly issued, shall receive Cabinet consent before issue, and shall be signed by the Minister.
- (2) Cabinet before giving consent to the issue of a Licence may request an opinion from the Attorney-General's Office that the issue of that Licence in those terms adheres to procedural propriety, the provisions of this Act and the other laws of the Kingdom, and the Kingdom's obligations under international law.

55 Issue of more than one Licence

Nothing in this Act shall prevent more than one Licence being issued to the same person.

56 Licence Decision-Making - Other States

The Authority, upon satisfactory receipt of an Application for an Exploration or Mining Licence, shall before taking a decision under section 50 of this Act provide -

- (a) timely and appropriately comprehensive information about that Application to any other State who may be affected by the proposed Seabed Mineral Activities contained within that Application; and
- (b) an opportunity for that State to provide information that will be taken into account by the Authority in taking a decision under section 50 of this Act in relation to that Application.

57 Licence Decision-Making- Public Consultation

The Authority, upon satisfactory receipt of an Application for a Mining Licence, shall before taking a decision under section 50 of this Act provide -

- (a) timely and appropriately comprehensive information about that Application to the public of Tonga in adherence to prescribed procedures or in any other way the Authority sees fit, particularly any groups who may be affected by the proposed Activities contained within that Licence Application; and
- (b) an opportunity for members of the public or interest groups representing the public to provide information that will be taken into account by the Authority in taking a decision under section 50 of this Act in relation to that Application.

58 Licence Decision-Making- General

The Authority -

- (a) shall deal with Licence Applications promptly, in accordance with prescribed procedures and within prescribed time limits;
- (b) may request further information from a Licence Applicant, or require the Applicant to perform a test or demonstration, before making a decision under section 50 of this Act and may return a Licence Application without a decision if the Applicant fails properly to comply with a request under this sub-section; and
- (c) in taking any decision under section 50 of this Act shall -
 - (i) adhere to its duties as provided for in section 13 of this Act; and
 - (ii) take into account prescribed qualification criteria in relation to the Applicant, and prescribed evaluation criteria in relation to the Application.

59 Licence Decision-Making- Written statement of reasons

Within thirty days of a decision having been made by the Authority under section 50 -

- (a) where the decision is to grant a Licence, a written statement of reasons will be promulgated by the Authority; and
- (b) where the decision is not to grant the Licence applied for, a written statement of reasons will be provided to the Applicant by the Authority.

60 Appeal against Licence decision

- (1) An Applicant who is dissatisfied with a decision by the Authority on a Licence Application may appeal the decision.
- (2) Any other interested party with legal standing who is dissatisfied with a decision by the Authority on a Licence Application may appeal the decision.

61 Duration of Licence Term

- (1) An Exploration Licence may be issued for such period as may be agreed between the Authority and the Applicant provided the duration is no more than six years, which term may be renewed upon expiry in accordance with this Act.
- (2) A Mining Licence may be issued for such period as may be agreed between the Authority and the Applicant, in adherence with any Regulations made under this Act, and having obtained prior approval of Cabinet to any terms and conditions.

62 Terms of Licence

When a decision has been made under section 50 to issue a Licence-

- (a) the Authority will in pursuance with prescribed procedures provide the Licensee with a draft Licence based on-
 - (i) the requirements of this Act;
 - (ii) the prescribed format; and
 - (iii) the content of the Application,for the Licensee to check and confirm its ability and willingness to be bound by its terms, before it is formally issued by the Authority, in accordance with section 54 of this Act;
- (b) the Licence shall be granted on the terms and conditions prescribed and any additional terms as may be agreed between the Authority and the Applicant provided these do not conflict with the Act and the prescribed terms, and subject to the approval of Cabinet;
- (c) the Licence will specify the Seabed Minerals in respect of which it is granted;
- (d) each Licence will include a detailed approved Exploration or Mining work plan in the prescribed format, including time schedules, and specified annual expenditure requirements; and

- (e) the Licence may require an Environmental Impact Assessment or other studies to be conducted and reported upon by the Licensee before particular Seabed Mineral Activities can commence.

63 Review of Licences

- (1) A joint review and amendment of each Licence work plan, anticipated annual expenditure, and time schedule by the Authority-
 - (a) will be performed after completion of any Environmental Impact assessment conducted after the date of issue of the Licence; and
 - (b) may be performed periodically at the request of the Licensee or the Authority upon material new information coming to the attention of the Licensee or the Authority.
- (2) The Licensee may be required to submit additional data for the purposes of such a review.
- (3) The review shall be conducted in accordance with any prescribed procedures, or procedures provided by the Licence.
- (4) The Authority shall obtain the consent of Cabinet, before a Mining Licence is varied in a material particular.

64 Exclusivity of Licence and Security of Tenure

- (1) The Licence will, in consideration of-
 - (a) payments required by Regulations and in the Licence; and
 - (b) the performance and observance by the Licensee of all the terms and conditions provided by this Act, Regulations, and the terms of the Licence,

grant to the Licensee during the continuance of the Licence, exclusive rights to conduct Seabed Mineral Activities with regards to the specified Seabed Minerals of the Licensed Area and to conduct Ancillary Operations, in accordance with the agreed Exploration or Mining work plan contained in the Licence.

- (2) The Authority will not vary, suspend, or revoke any Licence except in accordance with this Act.
- (3) A Licence may be renewed for successive periods by the Authority in accordance with this Act and there is a presumption that an Exploration

Licensee who has performed satisfactorily, will be granted a Mining Licence over the same site.

65 Right of Retention arising from Exploration Licence

- (1) Where the Authority has issued an Exploration Licence -
 - (a) the Authority will not issue a Mining Licence in respect of any part of the Licensed Area within three years of the end of the term of the Exploration Licence, without the Exploration Licensee's written consent; and
 - (b) within three years of the end of the term of the Exploration Licence, the Licensee may request that the Authority retain for future exclusive Mining by the Licensee nominated blocks from the Exploration Licence Area.
- (2) The Authority may determine to retain an area nominated by a Licensee under sub-section (1)(b) for future exclusive Mining by the Licensee for rolling periods of not more than five years subject to the Licensee continuing to demonstrate to the Authority's satisfaction that-
 - (a) the Licensee is taking diligent steps towards making an Application for a Mining Licence in respect of the retained area; or
 - (b) there are good grounds for the Licensee not presently applying for a Mining Licence in respect of the area, including (without limitation) on the basis of the state of technology for the relevant Mining activities and the market for the Seabed Minerals in the retained area.
- (3) The Authority may at its discretion determine the length of time for which an area may be retained under this section for future exclusive Mining by a Licensee, and there is no limit to the number of times that the Authority may make such a determination to retain an area, subject to the Authority holding the requisite satisfaction.
- (4) If the Authority makes a determination under sub-section (2)(b) to retain an area for future exclusive Mining by a Licensee, the Authority shall-
 - (a) not consider an Application from any other person to conduct Seabed Mineral Activities in the retained area during the time period determined under sub-section (3);
 - (b) notify the Licensee of such terms and conditions of the determination, not inconsistent with this Act and Regulations, as the Authority considers fit; and

- (c) within thirty days of the determination publish the retention by notice in the Gazette.
- (5) If the Authority determines that it is not satisfied for the purpose of sub-section (2) in respect of some or all of a retained area, that area is no longer retained exclusively for future Mining by the Licensee, but such area may form the subject of a new Application.

66 Exploration Licence may require staged relinquishment of Area

The Authority may, under provisions made by Regulations or the terms of the Exploration Licence, require the Exploration Licensee to relinquish a percentage or portions of the Licence Area over a set time period in accordance with a schedule to be set by the Authority in the Licence or that may be prescribed.

67 Seabed Minerals recovered under Exploration Licence

- (1) Any core or sample or other quantity or part of Seabed Minerals acquired by the Licensee in the course of undertaking Seabed Mineral Activities and Ancillary Operations under an Exploration Licence shall remain the property of the Crown and shall not be disposed of or removed from the Kingdom, except for the purposes of assay, identification, analysis, or storage, without the consent of the Authority, who may grant consent subject to such conditions as the Authority may deem fit to impose.
- (2) Where cores or other samples of Seabed Minerals are acquired by the Licensee, a record sufficient for the identification of the core or sample and the location of its origin shall be maintained by the Licensee, and the samples shall be made accessible to the Authority, upon request.
- (3) Any person who does not comply with sub-section (1) commits an offence.
- (4) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$250,000.

68 Mining Licence gives Licensee rights to the Seabed Minerals recovered

When Seabed Minerals are recovered by a Mining Licensee from the Licensed Area and in accordance with the terms of the Licence -

- (a) the Licensee shall acquire property rights over and title to those Seabed Minerals at the point of extraction (this includes the rights to market, process,

sell and export the Seabed Minerals and subject to this Act to freely expend the sale proceeds); and

- (b) those Seabed Minerals are not subject to the rights of any other person.

69 Diligent Mining

- (1) Once mining of Seabed Minerals has commenced under a Mining Licence, the Licensee shall, within reasonable limits and taking into consideration all relevant factors, continue mining throughout the period of the Licence.
- (2) Notwithstanding sub-section (1), the Authority may at the Licensee's request under section 73 of this Act, and upon demonstration to the Authority's satisfaction that there is good cause to do so, authorise temporary suspension of Mining Activities.

70 Duties and Liability of Licensee

- (1) Licensees shall comply with the terms of the Licence, this Act, and any Regulations made under this Act.
- (2) The Licensee is responsible for the Seabed Mineral Activities and Ancillary Operations carried out within its Licence Area, and their compliance with this Act, Regulations made under this Act, and the Licence.
- (3) The Licensee shall at all times keep the Kingdom indemnified against all actions, proceedings, costs, charges, claims and demands which may be made or brought by any third party in relation to its Seabed Mineral Activities, and will be liable for the actual amount of any compensation or damage arising out of its failure to comply with this Act, Regulations made under this Act, or the Licence, and any wrongful acts or omissions and those of its employees, officers, subcontractors, and agents in the conduct of the Seabed Mineral Activities or Ancillary Operations under Licence, including but not limited to that arising from injury to coastal or marine users, damage to the Marine Environment, and any related economic loss or compensation.
- (4) Any obligations which are to be observed and performed by the Licensee shall at any time at which the Licensee is more than one person be joint and several obligations.
- (5) The Licensee shall remain liable for damage resulting from its Seabed Minerals Activities notwithstanding that its Title may have been terminated or suspended.

71 Part of Licence Area outside of national jurisdiction

If part of the Licence Area includes or purports to include an area that is outside of the national jurisdiction of the Kingdom or an area that comprises or is within a Protected Area or a Marine Reserve, then the Licence remains valid, but does not authorise Seabed Mineral Activities to be carried out within that part.

72 Renewal of Licence

- (1) A Licensee can apply to the Authority for that Licence to be renewed for successive periods of up to five years each.
- (2) The Authority with Cabinet's consent will grant such a renewal provided the application to renew is received at least ninety days before the expiry date of the initial term of the Title, and the Title Holder continues to meet the Qualification criteria and has met its obligations under the subsisting Title.
- (3) If a renewal is granted after the expiry date of the initial term of the Title, the Title is deemed to have continued in force during the period between that expiry date and the date the renewal is granted.
- (4) If a renewal is to be refused, the Authority will follow the processes contained in section 73(2).

73 Variation, suspension, or revocation of a Licence

- (1) The Authority may vary, suspend, or revoke any Exploration Licence or Mining Licence under this section—
 - (a) where any of the qualification criteria prescribed under regulations ceases to be met by the Licensee in a material particular;
 - (b) if a security deposit required under section 93 of this Act is not deposited in accordance with this Act;
 - (c) where the variation or revocation is in the reasonable opinion of the Authority necessary to -
 - (i) prevent serious risk to—
 - (a) the safety, health or welfare of any person; or
 - (b) the Marine Environment;
 - (ii) avoid a conflict with any obligation of the Kingdom arising out of any international agreement or instrument in force for the Kingdom; or

- (iii) avoid any situation which may reasonably be expected to lead to a breach of international or domestic peace and security;
- (d) in any case, with the consent of the Licensee;
- (e) in order to secure or reasonably to promote compliance by the Licensee with the Licensee's obligations and undertakings under this Act, the Regulations and the Licence;
- (f) if the Licensee has failed to comply with a final binding decision of a dispute settlement body applicable to it;
- (g) upon the bankruptcy, insolvency, or receivership of the Licensee, or upon the Licensee ceasing to exist as a legal entity;
- (h) upon consultation with the Licensee, where the Licensee is prevented for a continuous period exceeding two years from undertaking the Licensed Seabed Mineral Activities under the Licence despite taking all reasonable measures to do so, because of an event outside of the Licensee's control;
- (i) where no material efforts have been made by the Licensee to undertake the Licensed Seabed Mineral Activities for a period exceeding two years;
- (j) where there has been a serious, persistent or wilful breach by the Licensee of -
 - (i) a material undertaking or term or condition of the Licence;
 - (ii) the provisions of this Act or Regulations made under this Act or other laws of the Kingdom;
 - (iii) conditions imposed under the EIA Act; or
 - (iv) requirement of an Order made under this Act,and such breach either cannot be remedied or has not been remedied upon the giving of reasonable notice by the Authority;
- (k) where the relevant Seabed Mineral Activities in the view of Cabinet constitute an unacceptable risk to the Kingdom or are clearly no longer in the interests of the Kingdom due to changes in the circumstances pertaining to the Activities including (without limitation) changes to -
 - (i) the market for Seabed Minerals;
 - (ii) best environmental practice pertaining to Seabed Mineral Activities; or
 - (iii) the state of technology utilised for Seabed Mineral Activities,

- as well as the capacity of the Licensee to adapt to the changes in circumstances;
- (l) where any payment owing under section 75 or any part of this Act is in arrears or unpaid for six months following the day on which it ought to have been paid; or
 - (m) upon transfer, mortgage, lease of a Title, or significant change in the constitution, ownership or control of the Title Holder, without the Authority's prior approval.
- (2) Before making a decision under this section the Authority, shall unless the decision is made at the Licensee's request and on the exact terms of the Licensee's request, give to the Licensee at least ninety days written notice of the Authority's intention to make the decision, setting out details of that proposed decision and the reasons for it, and inviting a person to whom the notice or a copy of the notice has been given, and who objects to it, to make a written submission to the Authority about the proposal within a specified timeframe.
 - (3) If the Authority has suspended a Licence, it may by notice require the Licensee to resume its activities and comply with the terms and conditions of the Licence, not later than 90 days after such notice.
 - (4) In lieu of variation, suspension or revocation under sub-sections (1)(a), (b), (c), (e), (f), (i), (j), and (l), the Authority may take any of the administrative actions provided for in section 27 of this Act, or impose upon the Licensee monetary penalties proportionate to the seriousness of the violation and in any case not exceeding \$1,000,000, which amount excludes any compensation payable for damage or harm.
 - (5) The Authority shall not execute a decision involving monetary penalties under sub-section (4) until the Licensee has been accorded a reasonable opportunity to exhaust the judicial remedies available to it under the laws of the Kingdom.
 - (6) In the event of termination or expiration of a Licence, the Licensee shall comply with the Regulations and shall remove all installations, plant, equipment and materials in the Licensed Area and shall make the Licensed Area and its surroundings safe so as not to constitute a danger to persons, shipping or to the Marine Environment.
 - (7) Upon effecting a variation of a Licence the Authority shall-
 - (a) prepare an instrument of variation signed by the Minister and the designated representative of the Licensee;

- (b) register the variation to that Licence in the register of Titles, maintained by the Authority under section 34 of this Act;
- (c) issue to the Licensee a copy of that instrument of variation; and
- (d) publish notice of the variation in the Gazette.

74 Surrender of a Licence

Subject to payment of outstanding sums payable in accordance with section 75 of this Act and without prejudice to any obligation or liability imposed by this Act or Regulations made under this Act, or incurred under any term or condition contained in the Licence, the Licensee may at any time surrender the Licence without penalty by giving to the Authority not less than six months prior notice in writing to that effect.

75 Ongoing liability of a Licensee

Upon a revocation of a Licence by the Authority, or surrender of the Licence by the Licensee, all rights granted shall cease and determine, but the Licensee will remain subject to any ongoing obligation or liability incurred by the Licensee as a result of Activities already conducted, or otherwise by reason of having entered into the Licence, including requirements to submit reports and to make payments to the Authority for the period during which Seabed Mineral Activities were conducted.

76 Extension of Exploration Licence while Mining Licence Application under consideration

If an Application for a Mining Licence is made by an Exploration Licensee for the same Licence Area, the Exploration Licence is deemed to have continued in force until the time at which the Applicant receives a final decision on the Mining Licence Application.

PART 7 – SPONSORSHIP OF ACTIVITIES IN THE AREA

77 Entry into Sponsorship of Seabed Mineral Activities in the Area

- (1) The Authority may in any manner it sees fit invite Sponsorship Applications, or entertain discussions, with Sponsorship Applicants or potential Sponsorship Applicants.

- (2) To be eligible to perform Seabed Mineral Activities under the Kingdom's Sponsorship a Sponsorship Applicant shall first –
 - (a) obtain a valid Sponsorship Certificate from the Authority; and
 - (b) obtain a valid contract from the ISA,
pertaining to those Seabed Mineral Activities in the Area.
- (3) Upon Application to conduct Seabed Mineral Activities within the Area under the sponsorship of the Kingdom, and following such format and processes as may be prescribed, the Authority may take a decision –
 - (a) to issue to an Applicant –
 - (i) a Sponsorship Certificate for Exploration; or
 - (ii) a Sponsorship Certificate for Mining,
committing to sponsor the Applicant to conduct specified Seabed Mineral Activities within the Area under contract with the International Seabed Authority; or
 - (b) not to issue any Sponsorship Certificate.
- (4) The Authority may provide opportunity for members of the public or interest groups representing the public to provide information be taken into account by the Authority in taking a decision under subsection (1).
- (5) The Authority shall not issue a Sponsorship Certificate where in the Authority's reasonable opinion, the proposed Seabed Mineral Activities –
 - (i) are likely to result in irreparable harm to any community, cultural practice or industry in the Kingdom; or
 - (ii) would not be in the public interest of the Kingdom.

78 Prerequisite conditions to issue of Sponsorship Certificate

A Sponsorship Certificate shall only be issued to a Sponsorship Applicant who –

- (a) is a body corporate, registered in Tonga;
- (b) has or will have at the commencement of the proposed Seabed Mineral Activities sufficient financial and technical resources and capability to properly perform the Seabed Mineral Activities in compliance with the Rules of the ISA;
- (c) has paid any applicable fees under this Act; and

- (d) has adhered to prescribed Application processes and meets prescribed qualification criteria.

79 Sponsorship Application

- (1) A Sponsorship Application shall be made in writing to the Authority and shall include –
 - (a) evidence that the Sponsorship Applicant meets the Sponsorship Qualification Criteria;
 - (b) 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 Seabed Mineral Activities;
 - (c) written undertakings that the Sponsorship Applicant –
 - (i) will fully comply with its obligations under the Rules of the ISA and this Act;
 - (ii) warrants that the content of the Sponsorship Application is true and accurate to the best of its belief; and
 - (iii) intends to apply for a contract with the ISA to conduct Seabed Mineral Activities in the Area under the sponsorship of the Kingdom;
 - (d) copies or summaries of any studies conducted by the Sponsorship Applicant or other data in relation to the potential of the proposed Contract Area;
 - (e) copies or summaries of any studies conducted by the Sponsorship Applicant or other data in relation to potential impact of the Seabed Mineral Activities on the Marine Environment;
 - (f) an indication insofar as known of the Sponsorship Applicant's proposed-
 - (i) methods for financing the Seabed Mineral Activities;
 - (ii) ownership, lease or other arrangement to use vessels and equipment required for the operation of the Seabed Mineral Activities; and
 - (iii) insurance or contingency funding to cover damage that may be caused by the Seabed Mineral Activities or the costs of responding to an Incident;
 - (g) a list of employees required to operate the Seabed Mineral Activities, and an indication if any of these will be recruited from the Kingdom;

- (h) a capacity-building programme providing for the training of personnel of the Kingdom;
 - (i) the Sponsorship Application fee required by the Act;
 - (j) a statement as to whether the Sponsored Party or any of its Directors has previously been found on reasonable evidence to have-
 - (i) breached a material term or condition of the Rules of the ISA;
 - (ii) been convicted of an offence or incurred a civil penalty pertaining to the conduct of Seabed Mineral Activities or similar sea or land based activities in another jurisdiction; or
 - (iii) been convicted of an offence involving fraud or dishonesty;
 - (k) any other matters as may be prescribed.
- (2) For the purposes of sub-section (1)(a), the Sponsorship Qualification Criteria are that-
- (a) the Sponsorship Applicant-
 - (i) is an existing body corporate, registered in the Kingdom;
 - (ii) has, or will have at the commencement of the proposed Seabed Mineral Activities, sufficient financial and technical resources and capability -
 - (aa) properly to perform the Seabed Mineral Activities in compliance with the Rules of the ISA; and
 - (bb) to cover damage that may be caused by the Seabed Mineral Activities or the costs of responding to an Incident;
 - (iii) has submitted a valid Application in accordance with this Act and Regulations, including the Sponsorship Application fee;
 - (b) the proposed Seabed Mineral Activities are consistent with the Rules of the ISA in relation to environmental management;
 - (c) the proposed Seabed Mineral Activities are compatible with applicable national and international laws, including those relating to safety at sea and the protection and preservation of the Marine Environment; and
 - (d) the proposed Seabed Mineral Activities will not unduly affect –
 - (i) the rights other legitimate sea users;
 - (ii) the protection and preservation of the Marine Environment; or
 - (iii) international and domestic peace and security.

- (3) A decision by an official organ of the ISA to grant to Sponsored Party a contract may be considered by the Authority as evidence in relation to its Sponsorship Certificate decision-making.

80 Terms of the Sponsorship Certificate

A Sponsorship Certificate, shall be issued to a Sponsored Party in a form necessary to satisfy the Rules of the ISA, and shall contain –

- (a) the name of the Sponsored Party;
- (b) a statement that the Sponsored Party is –
 - (i) a national of the Kingdom; or
 - (ii) subject to the effective control of the Kingdom or its nationals;
- (c) a statement by the Kingdom that it sponsors the Sponsored Party;
- (d) the date of deposit by the Kingdom 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 Kingdom 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 period of time for which the Sponsorship Certificate shall remain in force unless otherwise terminated in accordance with this Act, and any relevant regulations or other rules or guidance issued by the ISA;
- (g) content reasonably required by the ISA or that the Authority considers fit to include.

81 Cabinet consent and Minister's signature required for Sponsorship Certificate

- (1) Any Sponsorship Certificate, to be validly issued or varied, shall receive Cabinet consent before issue, and be signed by the Minister.
- (2) Cabinet before granting consent to the issue of a Sponsorship Certificate may request an opinion from the Attorney-General's Office that the issue of that Sponsorship Certificate in those terms complies with procedural propriety, the provisions of this Act, and the Kingdom's obligations under international law.

82 Sponsorship agreements

The Authority, with the Minister's approval may enter into written agreements with the Sponsored Party at any time to establish additional terms and conditions as to the sponsorship arrangement, provided the terms of such an agreement do not or are not likely to lead to a contravention by the Kingdom or the Sponsoring Party of the Rules of the ISA or this Act, nor be inconsistent with any international law obligations of the Kingdom.

83 Continuing obligations of the Sponsored Party

The obligations of the Sponsored Party contained in this Act, Regulations made under this Act, or in the Sponsorship Certificate or any Sponsorship agreement will where applicable commence before, and continue beyond, the period during which the Sponsored Party is actively performing the Seabed Mineral Activities and Ancillary Operations under contract with the International Seabed Authority in the Area.

84 Liability of Sponsored Party

- (1) The Sponsored Party shall be responsible for the performance of all Seabed Mineral Activities carried out within the Contract Area, and their compliance with the Rules of the ISA; and will be liable for the actual amount of any compensation or damage or penalties arising out of its failure so to comply, or out of any wrongful acts or omissions and those of its employees, officers, subcontractors, and agents in the conduct of the Seabed Mineral Activities.
- (2) Any obligations which are to be observed and performed by the Sponsored Party shall at any time at which the Sponsored Party is more than one person be joint and several obligations.
- (3) A Sponsored Party shall at all times keep the Kingdom indemnified against all actions, proceedings, costs, charges, claims and demands which may be made or brought by any third party in relation to its Seabed Mineral Activities.

85 Crown Responsibilities

Where the Kingdom is sponsoring a Sponsored Party which holds a contract with the ISA to conduct Seabed Mineral Activities in the Area, the Kingdom will, via the Authority-

- (a) take all actions necessary to give effect to the Kingdom's 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;
- (b) ensure that its conduct in relation to the ISA, the Area and Seabed Mineral Activities adheres to the requirements and standards established by general principles of international law;
- (c) take all appropriate means to exercise its effective control over Sponsored Parties or, seeking to ensure that their 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;
- (d) not impose unnecessary, disproportionate, or duplicate regulatory burden on Sponsored Parties, nor impose requirements upon a Sponsored Party under this Act or Regulations to be made under this Act except insofar as these are consistent with existing requirements imposed by, the UN Convention on the Law of the Sea, the Rules of the ISA and other applicable standards of international law; and
- (e) promote the application of the Precautionary Approach.

86 Termination of Sponsorship Certificate

- (1) A Sponsorship Certificate shall remain in force unless and until it is terminated in accordance with sub-section (2).
- (2) A Sponsorship Certificate terminates if, pursuant to this Act –
 - (a) it is made for a specified term and that term expires without renewal in accordance with section 87 of this Act;
 - (b) it is surrendered by the Sponsored Party in accordance with section 89 of this Act;
 - (c) it is revoked by the Authority in accordance with section 88 of this Act, and upon termination all rights granted to the Sponsored Party by the Kingdom shall cease and determine.

87 Renewal of Sponsorship

- (1) A Sponsorship Certificate can be renewed by the Authority with the Minister's consent for successive periods of up to five years each, provided an

application for renewal is received from the Sponsored Party by the Authority at least nine months before the expiry date of any initial term.

- (2) The Authority will inform the Sponsored Party of whether the renewal has been granted or refused within three months of the receipt of the application for renewal, and until that decision is communicated the Sponsorship Certificate shall be deemed to continue in force.
- (3) Where the renewal is to be refused, the Authority will follow the processes contained in section 88(2) of this Act.

88 Variation, suspension and revocation of Sponsorship Certificate

- (1) The Authority may vary, suspend or revoke any Sponsorship Certificate —
 - (a) where any of the prerequisite conditions required under section 78 this Act ceases to be met by the Sponsored Party in a material particular;
 - (b) where a security deposit required under section 93 of this Act is not deposited in accordance with this Act;
 - (c) where the variation or revocation is in the reasonable opinion of the Authority necessary to -
 - (i) prevent serious risk to—
 - (a) the safety, health or welfare of any persons; or
 - (b) the Marine Environment; or
 - (ii) avoid a conflict with any obligation of the Kingdom arising out of any international agreement or instrument in force for the Kingdom;
 - (d) in any case, with the consent of the Sponsored Party;
 - (e) upon the bankruptcy, insolvency, or receivership of the Sponsored Party, or upon the Sponsored Party ceasing to exist as a legal entity;
 - (f) where no material efforts have been made by the Sponsored Party to undertake the sponsored Seabed Mineral Activities for a period exceeding five years from the date of signing the contract with the ISA;
 - (g) where there has been a serious, persistent or wilful breach by the Sponsored Party of the Rules of the ISA, the requirements of this Act or Regulations made under this Act, an Order made under this Act, or a final binding decision of a dispute settlement body applicable to the Sponsored Party, and such breach cannot be remedied by the Sponsored

- Party, or has not been remedied upon the giving of reasonable notice to the Sponsored Party by the Authority;
- (h) where, following at least two written notices given by the Authority to the Sponsored Party in accordance with this Act, any payment or deposit required or owing under this Act or any part thereof is in arrears or unpaid for six months following the day on which it ought to have been paid;
 - (i) where the Sponsored Party knowingly or recklessly provides the ISA or the Authority with information that is false or misleading in a material particular, or fails to retain or wilfully alters, suppresses, conceals or destroys any document which is required to be produced to the ISA or the Authority; and
 - (j) upon transfer, mortgage, lease of a Title, or significant change in the constitution, ownership or control of the Title Holder, without the Authority's approval.
- (2) Before making a decision under this section of the Act the Authority shall –
- (a) give to the Sponsored Party at least 30 days written notice of the Authority's intention to make the decision, setting out details of the proposed decision and the reasons for it, and inviting a person to whom the notice, or a copy of the notice has been given to make a written submission to the Authority about the proposal within a specified timeframe, if there are any objections;
 - (b) give a copy of the notice to any such other persons as the Authority thinks fit;
 - (c) take into account any submissions made in accordance with the notice; and
 - (d) where the decision is to revoke the Sponsorship Certificate, give the Sponsored Party no fewer than six months' notice before that revocation takes place.

89 Surrender of Sponsorship

A Sponsored Party may at any time surrender a Sponsorship Certificate without penalty by giving to the Authority not less than six months' prior notice in writing to that effect.

90 Ongoing liability after termination of sponsorship

A Sponsoring Party shall remain –

- (a) subject to any ongoing obligations, including requirements to submit reports and to make payments to the Authority and the ISA; and
- (b) responsible for any damage from its wrongful acts or otherwise arising from its Seabed Minerals Activities in accordance with this Act, notwithstanding that its Sponsorship Certificate has terminated.

PART 8 - FISCAL ARRANGEMENTS**91 Payments by Prospectors, Licensees and Sponsored Parties****(1) Application fee**

An Applicant for a Title under this Act shall upon Application pay to the Authority the prescribed fee, which shall be non-recoverable.

(2) Sponsorship payments

The holder of a Sponsorship Certificate shall pay to the Authority -

- (a) such sums by way of annual administrative fees for the Kingdom's sponsorship of its Seabed Mineral Activities in the Area, and
 - (b) where the Sponsorship Certificate pertains to a contract for Mining in the Area, such sums by way of a commercial recovery payment,
- at such times and in such amounts as may be prescribed, or provided in the Sponsorship Certificate or a Sponsorship agreement made under this Act.

(3) Taxes

Licensees, and their sub-contractors, advisors, and employees shall pay all applicable customs duties and taxes in accordance with the relevant applicable laws of the Kingdom.

(4) Seabed Minerals royalties

The holder of a Mining Licence shall pay such sums by way of royalties for the extraction of the Kingdom's Seabed Minerals and at such times as may be specified under the relevant applicable laws of the Kingdom. Each payment shall be accompanied by details of the Seabed Minerals produced, sold or disposed of, and the details of the payment and how it has been calculated.

92 Recovery of payments owed by Prospectors, Licensees and Sponsored Parties

A sum of money payable pursuant to section 91 of this Act, is a debt due to the Kingdom, and may be recovered in the Supreme Court of Tonga or a court of competent jurisdiction, where-

- (a) in any such proceedings a certificate of the Authority certifying that a specified sum of money is so payable, shall be received as evidence of that fact;
- (b) any sum unpaid by the Title Holder may at the court's discretion be recovered from any security deposited by the Title Holder under section 93 of this Act; and
- (c) interest on the amount outstanding may additionally be charged at a prescribed or otherwise reasonable rate determined by the court.

93 Security Deposit

- (1) The Authority may before granting a Title require an Applicant for a Title to deposit security as a guarantee of performance of the obligations attaching to the Title.
- (2) The Authority shall, with the consent of Cabinet, determine the form and the amount or value of the security.
- (3) The terms and conditions under which the security is held will be set out in the Title.
- (4) The security may be used by the Authority to take steps towards fulfilling any obligations that the Title Holder fails to fulfil, or to rectify any damage or loss caused as a result of such failure, including for clean-up or compensation costs in respect of any damage caused by pollution or other incident occurring as a result of the Seabed Mineral Activities.

94 The Seabed Minerals Fund

- (1) There shall be established under the control and management of the Ministry responsible for finance a fund to be called the Seabed Minerals Fund into which there shall be paid any sums paid to the Authority under sections 91(1),(2) and (4) and 93, excepting any funds allocated by the Treasury to be used directly for the purposes of covering the costs of establishing the Authority and performing its functions under this Act.

- (2) The Seabed Minerals Fund is established with the objective to ensure the wise management of the Seabed Minerals resources for the benefit of both current and future generations.
- (3) The rules for the operation and management of the Seabed Minerals Fund shall be laid down by separate Act or by Regulations made under this Act.

PART 9 – MARINE SCIENTIFIC RESEARCH

95 Marine Scientific Research within the Kingdom’s national jurisdiction

Marine Scientific Research may not be carried out within an area of the Kingdom’s Exclusive Economic Zone or upon the Kingdom’s Continental Shelf by any person, unless that person has first -

- (a) properly applied for the Kingdom’s consent in accordance with this Act; and
- (b) received consent to that application for consent, or not received a denial of consent within six months of the date of that application for consent.

96 Application for Marine Scientific Research

For an application for consent to conduct Marine Scientific Research to have been properly made, for the purposes of section 97 to this Act, the application shall be made to the Authority in writing at least six months before the proposed commencement date of the Marine Scientific Research project, and shall contain -

- (a) the cruise name and number;
- (b) the name, nationality, contact details and address of the sponsoring institution, the scientist in charge of the project, and any other collaborators and participants;
- (c) the co-ordinates and charts of the broad area or areas within which the project is to be conducted;
- (d) a general description of the nature and objectives of the project, including the proposed date of commencement and its approximate duration, and the proposed use of the data collected, including any plans to make the research results internationally available;
- (e) the details of the methods, the equipment, and any installations to be used;

- (f) a preliminary assessment of likely impact on the Marine Environment of the proposed project;
- (g) the details of any intended ports of call;
- (h) modalities of the participation of a representative of the Kingdom in the project; and
- (i) the expected dates and method of submission to the Kingdom of a preliminary report, a final report, and assessment of data, samples and research results.

97 Consent to Marine Scientific Research

Unless there are reasonable grounds for a denial of consent in accordance with section 98 of this Act, the Authority shall provide its consent to a Marine Scientific Project as soon as reasonably practicable, and no later than six months after receipt of an application containing the information required by section 96.

98 Grounds for denial of consent to Marine Scientific Research

The Authority may deny consent to an application to conduct Marine Scientific Research for any reason whatsoever including if -

- (a) the Authority reasonably considers that -
 - (i) the proposed Marine Scientific Research is of direct significance to the exploration and Mining of the natural resources of the Kingdom, whether living or non-living;
 - (ii) the information supplied pursuant to section 96 of this Act is inaccurate; or
 - (iii) the person applying to conduct Marine Scientific Research already has an overdue outstanding obligation to the Kingdom from a prior Marine Scientific Research project; or
- (b) the proposed Marine Scientific Research involves –
 - (i) drilling into the Continental Shelf;
 - (ii) the use of explosives;
 - (iii) the introduction of harmful substances into the Marine Environment;
 - (iv) the construction, operation or use of artificial islands, installations or structures (as referred to in Articles 60 and 80 of the UN Convention on the Law of the Sea); or
 - (v) an unacceptable risk to the Marine Environment.

99 Nature of Marine Scientific Research consent

Marine Scientific Research –

- (a) does not entail any exclusive rights of access to the seabed or water column, and does not permit extraction of Seabed Minerals;
- (b) does not constitute the legal basis for any claim to any part of the Marine Environment or its resources; and
- (c) shall cease within a particular area upon written notice being given by the Authority.

100 Duties on parties conducting Marine Scientific Research

Parties conducting Marine Scientific Research within the Kingdom's national jurisdiction shall -

- (a) adhere to the terms of this Act, Regulations made under this Act, the EIA Act, and any rules or procedures relating to Marine Scientific Research issued by the Kingdom;
- (b) apply the Precautionary Approach and best environmental practices at all times;
- (c) conduct the Marine Scientific Research exclusively –
 - (i) for peaceful purposes; and
 - (ii) to increase scientific knowledge for the benefit of all mankind;
- (d) not proceed with Marine Scientific Research if there is evidence indicating that to proceed is likely to cause Serious Harm to the Marine Environment;
- (e) not unjustifiably interfere with other legitimate uses of the sea;
- (f) submit to the Authority a preliminary report, a final report, and assessment of data, samples and research results at such times and in such formats as are prescribed or agreed with the Authority prior to commencement of the project;
- (g) hold securely and provide the Authority with access at its request to all data and samples derived from the project;
- (h) work with the Authority to facilitate and support financially the participation of a representative of the Kingdom in the project;
- (i) inform the Authority of any major changes to the proposed Marine Scientific Research programme from the information provided in the application for consent;

- (j) submit to the Authority immediately by telephone and in writing notice of any incident arising from Marine Scientific Research that causes or is likely to cause -
- (i) Serious Harm to the Marine Environment; or
 - (ii) Serious Harm to the safety, health or welfare of any person; and
 - (k) after completion of the project, remove any installations or equipment unless otherwise agreed with the Authority.

PART 10 – MISCELLANEOUS

101 Discovery by Title Holder of Seabed Minerals not covered by Title

- (1) A Title Holder shall notify the Authority during the course of conducting Seabed Mineral Activities of the discovery and location of any Seabed Minerals to which that Title does not relate, within thirty days of the discovery.
- (2) Any application to include any such newly discovered Seabed Minerals in the Title shall be treated as a variation of the Title, in accordance with the relevant provisions of this Act or as may be prescribed.

102 Environmental conditions arising from Environmental Impact Assessment

The terms of any environmental conditions arising from an Environmental Impact Assessment conducted in compliance with the EIA Act, shall be adopted as part of the terms and conditions of any Title held under this Act.

103 Reports required under this Act

The form and content of any report required to be supplied to the Authority under this Act shall conform to any requirement prescribed or required by Ministerial Order, or specified in the conditions of the relevant title.

104 Transfer of Title

- (1) No Title granted under this Act can be assigned, transferred, leased, sub-let or mortgaged without the Authority's prior written consent (and payment of the

prescribed fee), which, in the event of an internal corporate re-organisation by the Title Holder is not to be unreasonably withheld.

- (2) In considering whether or not to give such consent, the Authority may require the same information from the proposed transferee as would be required of a new Applicant for the same Title under this Act, and an undertaking that the transferee assumes all of the obligations of the transferor, and the Authority may require the transferee to comply with the same processes as are prescribed for an Application for that type of Title.
- (3) A transfer of Title will only become effective upon entry into the register of Titles maintained by the Authority under section 34 of this Act.

105 Change of Ownership, Constitution or Control of a Title Holder

- (1) A Title Holder shall notify the Authority of any significant change in the constitution, ownership, control or corporate organisation of the Title Holder.
- (2) A change of the type stipulated in sub-section (1) shall have legal effect upon its approval by the Authority, which is not to be reasonably withheld.
- (3) The Authority, after receipt of notice stipulated in sub-section (1), assess the notice and notify the Title Holder of its final decision about its approval or rejection shall within sixty days from the date of its receipt of the notice.

106 Suspension of Title

- (1) A Title confers no entitlements during any period it is suspended under this Act.
- (2) The power to suspend a Title under this Act includes a power to lift the suspension.

107 Termination of Title

- (1) A Title granted terminates if, pursuant to this Act –
 - (a) its term expires, without renewal;
 - (b) it is surrendered by the Title Holder;
 - (c) it is revoked by the Authority; or
 - (d) in the case of a Licence, it ceases to be in force in respect of the whole of its area under section 71.

- (2) Upon termination of any Title, the Title Holder shall deliver to the Authority –
 - (a) all books, accounts, financial records, and performance data which the holder is required to maintain under this Act, Regulations made under this Act, or the terms of the Title;
 - (b) all reports and plans or maps prepared by or for the Title Holder pertaining to the Seabed Mineral Activities under the Title;
 - (c) all environmental and social consultation and related reports, documents, surveys and data prepared in relation to the Seabed Mineral Activities under the Title; and
 - (d) any other document, information or samples relating to the Title, as the Minister may reasonably direct.
- (3) Any person who fails to comply with sub-section (2) within 30 days of being directed to do by the Minister commits an offence.
- (4) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$100,000.

108 Grant of Title confers reasonable rights of access

A Title granted under this Act also entitles the Title Holder to the right of navigation within the Exclusive Economic Zone of the Kingdom in so far as is reasonably required by the Title Holder to access the area of the seabed that is the subject of the Title.

109 Nothing under this Act to authorise unnecessary interference with other sea users

- (1) A Title Holder shall carry out the Seabed Mineral Activities in such a way that will not interfere unreasonably with the exercise of the freedom of the high seas as reflected in article 87 of the UN Convention on the Law of the Sea.
- (2) A Title Holder, or person conducting Marine Scientific Research contravenes this section if –
 - (a) their performance of Marine Scientific Research, Seabed Mineral Activities or Ancillary Operations, interferes with –
 - (i) navigation;
 - (ii) fishing;
 - (iii) submarine cabling;

- (iv) Marine Scientific Research;
 - (v) the conservation of the resources of the sea or the seabed; or
 - (vi) any other activities that are lawfully being carried out; and
- (b) that interference is greater than is necessary for the reasonable exercise of the rights or performance of the person's duties under the Title.
- (2) Any person who contravenes this section commits an offence.
 - (3) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$250,000.
 - (4) Strict liability applies to an offence under this section.

110 Employees

Any Title Holder or person conducting Marine Scientific Research shall at all times observe and comply with any prevailing laws, rules or procedures relating to employment, including discrimination in employment, occupational health and safety, labour relations, social security, employment security, safety at sea, and living conditions of workers on-site.

111 Objects of an archaeological or historical nature

Any object of an archaeological or historical nature found by any Title Holder or person conducting Marine Scientific Research within the jurisdiction or control of the Kingdom shall be reported to the Authority and treated in accordance with its instructions, and shall be safeguarded pending receipt of those instructions.

112 Instructions given by the Authority

The grant of a Title under this Act does not create an estate or interest in land other than the rights expressly granted by this Act or the Title.

113 Safety zones

- (1) For the purpose of protecting an installation, infrastructure, facility or vessel being used for Seabed Mining Activities, the Authority may by notice published in the Gazette prohibit all vessels or specified classes of vessels, from entering or being present in a specified area ('the safety zone')

surrounding the installation, infrastructure, facility or vessel without the written consent of the Authority.

- (2) The owner of a vessel and any person in formal or substantive command of a vessel commits an offence against this section if the vessel enters or remains in a safety zone in contravention of subsection (1).
- (3) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$250,000.
- (4) It is a defence to a prosecution of a person for an offence against subsection (2) if the person satisfies the court that -
 - (i) an unforeseen emergency made it necessary for the vessel to enter or remain in the safety zone to attempt to secure the safety of human life, a vessel, pipeline, structure or equipment;
 - (ii) the vessel entered or remained in the safety zone in circumstances beyond the control of the person who was in command or in charge of the vessel; or
 - (iii) he is the owner of the vessel and he did not know that the person in command or in charge of the vessel was in contravention of subsection (1).

114 Interference with Seabed Mineral Activities

- (1) Unless authorised under this Act or Regulations made under this Act, no person may interfere with Seabed Mineral Activities or Ancillary Operations.
- (2) For the purposes of this section, “interfere” means wilful sabotage of Seabed Mineral Activities, or violence against any representative of the Authority or a Title Holder in the performance of their functions and duties under this Act or a Title, or similar physical interference or obstruction without reasonable excuse.
- (3) Any person who does not comply with subsection (1) commits an offence.
- (4) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$250,000 or to a prison term not exceeding ten years or both.

115 Indemnity of Public Officials

The Minister and authorised officers of the Authority shall not be liable for anything done or omitted to be done in good faith in the performance of any function vested in or delegated to them under this Act.

116 Public Officials prohibited from acquiring Title rights

- (1) No Public Official shall, directly or indirectly, acquire any right or interest in any mineral right, and any document or transaction purporting to confer any right or interest on any such officer shall be null and void.
- (2) No Public Official employed in the Authority or the Ministry shall acquire or retain any share in a private company carrying on Seabed Mineral Activities during that employment or within two years following the cessation of that employment.
- (3) Any person who does not comply with subsection (2) commits an offence.
- (4) Any person guilty of an offence under this section shall be liable to a fine not exceeding \$250,000 or to a prison term not exceeding ten years or both.

117 Disclosure of interest

- (1) Any person employed at the Ministry or otherwise having a role or influence in the administration of this Act who has an interest, direct or indirect, in any matter to be considered by the Authority shall disclose the nature of his interest to the Authority and such disclosure shall be recorded in the minutes of the Authority and that member shall not take part in any deliberation or decision of the Authority relating to the matter. A member who does not make such disclosure commits an offence and shall upon conviction be liable to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or both.
- (2) For the purposes of this Act, “interest” shall be defined as including, but not limited to, that person or members of that person’s family having direct or indirect ownership of shares or involvement in the funding or management of any entity conducting or funding activities in Tonga or being conducted under Tonga’s sponsorship, and any direct or indirect benefits.

118 Import Duties

- (1) A Title Holder and its nominated contractors and subcontractors engaged in Seabed Mineral Activities are hereby permitted to import into Tonga’s jurisdiction free of duty or other taxes on imports of machinery, equipment, vehicles, materials and supplies where imports of any of the said categories have been certified by the Title Holder to be for use solely in carrying out Seabed Mineral Activities under the Title.

- (2) Any of the items imported into the Kingdom may, if no longer required for the Seabed Mineral Activities, be freely exported at any time by the importing party without the payment of any export or import duty.
- (3) On the sale or transfer by the importer of any duty free imported items to any person in the Kingdom, import duty shall be payable by the importer on the value thereof at the date of such sale or transfer.

119 Information-handling

- (1) All records, returns, reports, plans, maps, surveys, cores, samples, assays of samples, accounts and information (for the purposes of this section the “Seabed Minerals Data”) which a Title Holder is or may be from time to time required to furnish under the provisions of this Act, any Regulations made under this Act or a Title shall be supplied at the expense of the Title Holder.
- (2) The Authority shall not disclose Seabed Minerals Data to any person not in the service or employment of the Crown, except-
 - (a) with the prior written consent of the Title Holder;
 - (b) to the extent necessary in connection with the administration of this Act, as provided in subsection (3), or as prescribed; or
 - (c) after twelve years from the date of receipt or until the expiry of any Title held by the Title Holder for the seabed area to which the Seabed Minerals Data relates, whichever is the longer.
- (3) Notwithstanding subsection (2), the Authority shall be entitled-
 - (a) to make publicly available, as part of the register of Titles held pursuant to section 34 of this Act, aspects of the Seabed Minerals Data required to be recorded in the Register;
 - (b) to make publicly available any documents required to be disclosed under any Regulations made under this Act, including Annual Reports, Applications and Titles;
 - (c) to prepare and publish reports, statistics and surveys of a general nature using information derived from any of the Seabed Minerals Data;
 - (d) where expedient in furtherance of its accountability function, to share information derived from the Seabed Minerals Data with the public of Tonga, provided that such disclosure would not be unduly prejudicial to the commercial interests of the Title Holder; and
 - (e) to make use of the Seabed Minerals Data for the purpose of any arbitration or litigation between the Crown and a Title Holder.

- (4) Prior to any disclosure or publication under subsection (3) that the Authority considers may prejudice the commercial interests of a Title Holder, the Authority shall consult the Title Holder about the content and shall ensure any comments received from the Title Holder in relation to the intended disclosure or publication are given due consideration before any disclosure or publication occurs.
- (5) Nothing in this section shall permit disclosure without prior consent by the Authority of Seabed Minerals Data that is confidential under applicable law, including but not limited to, personnel matters, confidential technical or proprietary information and intellectual property relating to the Seabed Mineral Activities, and privileged legal material.
- (6) Any employee or member of the Authority, or any other officer of the Crown who commits an offence in breach of this section, by-
 - (a) disclosing Seabed Minerals Data; or
 - (b) causing the loss of confidentiality of Seabed Minerals Data through reckless act or omission.
- (7) Any person who commits a breach of the type specified in subsection (6) is liable upon conviction to a fine not exceeding \$250,000 or ten years imprisonment.

120 Offence committed by a body corporate

Where an offence under this Act that has been committed by a body corporate is 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 and, in respect of an offence punishable by a fine only, if the court finds that the offence was committed by that person wilfully, recklessly, corruptly or for the purpose of personal gain, that officer is liable to imprisonment for a period of two years.

121 Notice

Any application, request, notice, warning, report, or direction made or given under this Act shall be made by the Authority or by the designated representative of the Title Holder, as the case may be, in writing, and shall be deemed served the day after delivery, if delivered by hand, facsimile or email to the Authority or to the designated representative.

122 Disputes

- (1) Any dispute arising between the Kingdom and another State in connection with Seabed Mineral Activities shall be resolved pursuant to the provisions of the UN Convention on the Law of the Sea.
- (2) Any dispute between the Kingdom and a Title Holder arising in connection with the administration of this Act shall 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 application to the Supreme Court of Tonga.

123 Regulations and Ministerial Orders

The Minister may, with the consent of Cabinet, make Regulations —

- (a) prescribing anything required or authorised to be prescribed under this Act;
- (b) generally for carrying this Act into effect;
- (c) without prejudice to the generality of the foregoing, Regulations may be made with respect to any of the following matters -
 - (i) the gridding, mapping and allocation of blocks, cells and Licence Areas;
 - (ii) classifying particular aspects of work relating to Seabed Minerals as a Major Project under the EIA Act, or absolutely prohibited due to unacceptable anticipated harm to the Marine Environment;
 - (iii) requisite content, format, consultation processes, independent verification, and timeframe for an Environmental Impact Assessment and the establishment of environmental baseline data for Seabed Mineral Activities;
 - (iv) prescribe further rules or processes pertaining to the handling by the Authority of conflicting Applications for the same Title pertaining to the same area;
 - (v) environment management plans, and provision for areas of the Exclusive Economic Zone and Continental Shelf that have features that require a location-specific approach;
 - (vi) prescribing the format, content, timeframe or processes for any Applications, reports or other data or information required under this Act;

- (vii) matters relating to the processes to be undertaken and the factors to be taken into account by the Authority in deciding whether or not to grant, review, vary, suspend, or revoke a Title;
- (viii) the terms of and a model version of a Title;
- (ix) the fiscal regime to be applied to Seabed Mineral Activities;
- (x) the operation of the Seabed Minerals Fund;
- (xi) provisions for post-Mining monitoring or other requirements relating to the closure of Seabed Mining Activities;
- (xii) information-handling for any data received or held by the Authority in relation to Seabed Mineral Activities;
- (xiii) the holding of inquiries into accidents or other incidents causing harm to the Environment or human health and safety occurring in the course of any Seabed Mineral Activities or Ancillary Operations;
- (xiv) Enforcement Orders and other sanctions, and powers connected with the investigation and administration of such Orders and other sanctions;
- (xv) providing that any prescribed breach of Regulations shall be an offence, and affording any defences available to any such offence;
- (xvi) the criminal penalty payable for any contravention of or failure to comply with the Regulations, which shall not exceed \$500,000;
- (xvii) a scheme of administrative penalties in lieu of a criminal penalty for any contravention of or failure to comply with the Regulations and the amount of administrative penalties payable, which penalties shall not exceed half of the applicable maximum criminal penalty;
- (xviii) further matters in relation to Prospecting Permits;
- (xix) further matters in relation to Exploration and Mining Licences;
- (xx) the prerequisite conditions to the issue by the Authority of a Sponsorship Certificate;
- (xxi) further matters in relation to Sponsorship Certificate or agreements;
- (xxii) that a Licensee shall be required to pay a Licence fee, the amount or manner of determining the Licence fee, and the times and manner of payment; or
- (xxiii) matters in relation to Marine Scientific Research within the Kingdom's national jurisdiction.

124 Transitional provisions

One year from the commencement of this Act –

- (a) every exploration licence, prospecting licence and any other authority granted under the Minerals Act or otherwise to carry out activities that constitute Seabed Mineral Activities shall expire; and
- (b) any person or persons who were before the commencement of this Act authorised to carry out activities that constitute Seabed Mineral Activities shall, to allow the continuation of such activities, obtain a permit or licence under this Act and comply with the requirements of this Act.

125 Consequential Amendments

- (1) The Minerals Act is amended by repealing the definition of “land” in section 2.
- (2) In respect of the Environmental Impact Assessment Act -
 - (a) Seabed Mineral Mining, as defined by this Act, shall be deemed a ‘Major Project’ for the purposes of the EIA Act, and is hereby added to the Schedule to that Act;
 - (b) Seabed Mineral Exploration, as defined by this Act, which upon preliminary assessment by the Minister of the Crown charged by the Prime Minister to have responsibility for the Environment is considered likely to cause Serious Harm to the Environment shall be deemed a ‘Major Project’ for the purposes of the EIA Act, and is hereby added to the Schedule to that Act.

ENDNOTES

¹ Act 10 of 2014

² G 44/2014