



Seabed Minerals (Royalties) Regulations 2013

Tom Marsters

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Queen's Representative

Order in Executive Council

At Avarua, Rarotonga this

10th day of December, 2013

Present:

His Excellency the Queen's Representative in Executive Council

Pursuant to section section 332(3) (item 4) of the Seabed Minerals Act 2009, His Excellency the Queen's Representative, acting on the advice and with the consent of the Executive Council, makes the following regulations—

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Regulations

- 1 **Title**
These regulations are the Seabed Minerals (Royalties) Regulations 2013.
- 2 **Commencement**
These regulations come into force on 1st January 2014.
- 3 **Interpretation**
(1) In these Regulations

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Act means the Seabed Minerals Act 2009;

Arm's length transaction means arm's length transaction as defined in section 3 of the Income Tax Act 1997;

Benefit means one or more of the following –

- (a) a reduction in the liability of a person to pay royalties; or
- (b) an entitlement to a refund; or
- (c) a postponement of a liability for the payment of royalties; or
- (d) any other advantage arising because of a delay in payment of royalties;

Collector means the Treasurer of the Revenue Management Division of the Ministry of Finance and Economic Management;

Income Tax Act means the Income Tax Act 1997;

Penalty means penalty payable under section 313(5) of the Act or regulation 10;

Royalties means royalties imposed under these Regulations;

Royalty avoidance scheme means a scheme if one of the main purposes of a person in entering into the scheme is the avoidance or reduction of any person's liability for royalties under these Regulations; and

Scheme includes a course of action, and an agreement, arrangement, promise, plan, proposal, or undertaking, whether express or implied, and whether or not legally enforceable.

- (2) Unless the context otherwise requires, any term that is not defined in these Regulations but is defined in the Act has the meaning assigned to it under the Act.

4 Liability for royalties

- (1) A person to whom section 313 of the Act applies is liable for a royalty equal to 3% of the export value of minerals recovered under a mining licence.
- (2) The liability for royalties arises at the time minerals are recovered and must be accounted for to the Collector in accordance with regulation 8.

5 Export value of minerals

- (1) The export value of minerals recovered by a person is the free-on-board ("fob") price received or receivable by the person for the minerals.
- (2) If a mineral is exported on the basis of a cost-insurance-freight ("cif") price, the export value of the mineral is the cif price reduced by the cost of ocean freight and insurance so as to arrive at an equivalent fob price.

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- (3) The export value of minerals recovered by a person but lost or destroyed before sale or other disposal is such amount as determined by the Collector.
- (4) If the Collector is satisfied that the price charged for minerals is not consistent with the price charged in an arm's length transaction, the Collector can substitute the price charged in an arm's length transaction.
- (5) Section 56A of the Income Tax Act applies, with the necessary changes made, to a transaction that is not an arm's length transaction.

6 Avoidance schemes

- (1) Despite anything in these Regulations, if the Collector is satisfied that –
 - (a) a royalty avoidance scheme has been entered into or carried out;
 - (b) a person has obtained a benefit in connection with the royalty avoidance scheme; and
 - (c) having regard to the substance of the royalty avoidance scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person referred to in paragraph (b) to obtain the benefit,the Collector may determine the royalty liability of the person who obtained the benefit as if the royalty avoidance scheme had not been entered into or carried out.
- (2) If a determination is made under sub-regulation (1) in relation to a person, the Collector must notify the person, in writing, of the determination and make a demand for any additional royalties payable as a result of the determination.
- (3) A demand under sub-regulation (2) must be made within six years from the date that the royalty avoidance scheme was carried out or entered into.

7 Returns

- (1) A person liable for royalties under section 313 of the Act and regulation 3 must furnish a return of royalties for each month stating the following –
 - (a) the export value of minerals in respect of which the person has received payment or consideration, or to which section 4(3) applies, during the month;
 - (b) the royalties payable thereon.
- (2) A return of royalties must be furnished by the twentieth day after the end of the month.
- (3) A return of royalties must be in the form approved by the Collector.
- (4) A return of royalties must be furnished in the following manner –
 - (a) by personal delivery or registered post to an office of the Revenue Management Division of the Ministry of Finance and Economic Management; or
 - (b) with the approval of the Collector, by electronic transmission subject to any specifications required by Collector.

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8 Records

- (1) A person liable for royalties must keep such accounts, documents, and records, including export documentation, that enable the computation of the royalties payable.
- (2) The accounts, documents, and records required to be kept under sub-regulation (1) must be retained for five years from the end of the month in which the royalties are payable.

9 Payment of royalties

- (1) The royalties payable by a person for minerals in respect of which the person has received payment or consideration, or to which section 4(3) applies, during a month are due on the due date for furnishing the person's return for the month.
- (2) The liability for royalties arises by operation of section 313(2) of the Act and this regulation, and is not dependent on the Collector making an assessment of royalties due.
- (3) Part XI of the Income Tax Act, other than sections 188 and 190, applies with the necessary changes made to royalties and penalty.

10 Refund of overpaid royalties

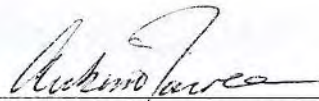
- (1) A person may apply to the Collector for a refund of any royalties paid for a month that is in excess of the amount of royalties properly payable by the person for that month.
- (2) An application for a refund under sub-regulation (1) must be made to the Collector in the approved form within three years after the date on which the royalties were overpaid.
- (3) If, in relation to an application under sub-regulation (1), the Collector is satisfied that royalties have been overpaid by a person for a month, the Collector must refund the overpaid royalties to the person.

11 Penalties

- (1) A person who fails to furnish a return of royalties by the due date is liable to a penalty equal to \$10,000 for each month or part of a month the return is not furnished.
- (2) Subject to sub-regulation (3), a person who knowingly or recklessly fails to keep any accounts, documents or records as required under regulation 7 is liable for a penalty equal to 50% of the amount of royalties payable by the person for the month to which the failure relates.
- (3) If no royalties are payable by the person for a month to which the failure referred to in sub-regulation (2) relates, the penalty is \$100,000.
- (4) A person is liable for a penalty equal to 50% of the royalty shortfall if that person does the following -
 - (a) knowingly or recklessly makes a statement to the Collector that is false or misleading in a material particular or omits from a statement made to the Collector any matter or thing without which the statement is false or misleading in a material particular; and

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- (b) the royalties liability of the person or of another person computed on the basis of the statement is less than it would have been if the statement had not been false or misleading (the difference being referred to as the "royalty shortfall"),
- (5) If the Collector has applied regulation 5 to a person, the person is liable for a penalty equal to double the amount of the royalties that would have been payable but for the application of regulation 5.
- (6) A person liable for a penalty under this regulation may apply in writing to the Collector for remission of the penalty payable and such application must include the reasons for the remission.
- (7) The Collector may, upon application under sub-regulation (5), or on his or her own motion, remit, in whole or in part, any penalty payable under this regulation by a person.
- (8) Subject to sub-regulation (7), the liability for penalty arises by operation of this regulation or section 313(5) of the Act and is not dependent on the Collector making an assessment of the penalty due.


Clerk of the Executive Council

These regulations are administered by the Office of the Seabed Commissioner.
These regulations were made on the 10th day of December 2013.