

THE PEW CHARITABLE TRUST'S COMMENTARY

***ON THE REVISED CONSOLIDATED TEXT: DRAFT REGULATIONS ON  
EXPLOITATION OF MINERAL RESOURCES IN THE AREA,  
DATED 29 NOVEMBER 2024 (ISBA/30/C/CRP.1)***

Key

**Black font, red font, and grey text-boxes** are replicated from the Draft Regulations text.

**Blue font** represents commentary or edits proposed by The Pew Charitable Trusts.

**Annex I**

**Application for approval of a Plan of Work to obtain an Exploitation Contract**

**Section I**

**Information concerning the applicant**

1. Name of applicant.
2. Street address of applicant.
3. Postal address (if different from above).
4. Telephone number of applicant's Designated Representative.
5. [omitted]
6. Email address of applicant's Designated Representative.
7. Name of applicant's Designated Representative.
8. Street address of applicant's Designated Representative (if different from above).
9. Postal address (if different from above).
10. Telephone number.
11. Fax number.
12. Email address.
13. If the applicant is a juridical person:
  - (a) Identify applicant's place of registration;
  - (b) Identify applicant's principal place of business/domicile; and
  - (c) Attach a copy of applicant's certificate of registration.
    - [(d) Identify the identities and locations of the applicant's:
      - (i) management including any members of its board of directors;
      - (ii) ownership, including any persons or entities holding **[5 percent]** or more of the applicant's equity, if different from the place of registration/domicile, for example in the case the applicant is a subsidiary of a parent company located in a different jurisdiction and
      - (iii) an organisational chart of the group structure.]

(vi) holding, subsidiaries, affiliated and Ultimate Parent companies, agencies and partnerships at the time of application]

~~[13. bis. Where the applicant is a company, provide an organisational chart or other description of any company group structure, including parent, subsidiary or other associated companies.]~~

[13.ter. Provide any additional information to assist determine the nationality of the applicant, or by whose nationals the applicant is effectively controlled.]

14. Identify the Sponsoring State or States.

15. In respect of each Sponsoring State, provide the date of deposit of its instrument of ratification of, or accession or succession to, the United Nations Convention on the Law of the Sea of 10 December 1982 and the date of its consent to be bound by the Agreement relating to the Implementation of Part XI of the Convention.

[15.bis. Provide information about relevant national laws and administrative measures that would apply to the applicant in its conduct of Activities in the Area, including on compensation mechanisms in respect of harmful impact from such activities damage caused by pollution of to the Marine Environment.]

~~[15.ter. A description of the Contractors and the Sponsoring States (or States) compliance enforcement strategies, and how these align with the Rules of the Authority.]~~

16. Attach a certificate of sponsorship issued by the Sponsoring State or States.

16. bis. Attach information on all the flag States and port States that are proposed to be involved in activities under the Exploitation Contract, in accordance with Regulation 5(2)(e).

We support inclusion of **paragraph (13) sub-paragraphs (d)(i), (ii), (iii) and (iv)** (which has been mis-typed as “(vi)”). We also support the addition **paragraph (13 ter)** to allow for provision of any additional information to assist determine the applicant’s nationality, and also to require an organisational chart of the group structure where the applicant is a company with parent, subsidiary or associated companies. Along these lines, we do not support the deletion of **paragraph 13bis**.

Determination of applicant nationality may be more complex for private sector applicants. It is important for the ISA to know to whom it is awarding contracts, including beneficial ownership. This can assist with prevention and investigation of financial and other crimes. It also has ramifications for the UNCLOS requirement of ‘effective control’ and sponsorship by the relevant sponsoring State, as well as prohibited acts under UNCLOS such as monopolisation, subsidisation and access to reserved areas by persons who are not developing States. Finally it is relevant to questions for liability, and for the ability for potential enforcement activity, or litigants, to identify relevant actors.

In recent times, the ISA has awarded contracts for exploration to different companies sponsored by different States, which have later transpired to be subsidiaries of the same parent company. The parent company was not named in the applications. To properly assess potential monopolization or contractor dominance, the ISA needs to require information about company structure and ownership of applicants at the time of application. This should be sufficient to allow ‘piercing of the corporate veil’, to identify where parent companies may have silent involvement in more than one ISA contractor. We welcome relevant proposals that have been made by member States, now incorporated in the Regulations, in relation to e.g. Parent Company Liability Statements, and a beneficial ownership registry. This is also the rationale for making more specific enquiry on these points in the application process.

In relation to **paragraph 13(d)**, it may be sensible to refer to “*Company Principals*” (which should be defined in the Schedule, to ensure common understanding that this pertains to the persons taking key operational and management decisions). Or to include a separate requirement in this Section I of Annex I to list Company Principals. This is to align with provisions in the Regulations that enable the ISA to bar Company Principals involved in previous serious violations of an ISA Contract.

We support retention of **paragraph (15bis)**. The ISA must discharge its mandate to act on behalf of humankind as a whole by ensuring that a sponsoring State takes basic steps necessary to ensure compliance by the Contractor with UNCLOS and the ISA's rules, and enables civil law claims against Contractors within its domestic legal system. In addition, UNCLOS Article 235 imposes a direction obligation upon States with regards recourse to compensation. Unless the ISA collects information as to these national mechanisms, it may be very hard for an affected party to access compensation measures in practice.

We do not support the deletion of **paragraph (15ter)**. The ISA can better coordinate with a sponsoring State in relation to monitoring and enforcement of compliance where it has clear understanding of the sponsoring State's compliance regime including whether the domestic law provides recourse to civil action, and/or criminal prosecutions for Contractor breaches. ISA should require Contractors, and encourage sponsoring States, to operate compliance enforcement strategies aligned with that of the ISA. Retention of paragraph (15 ter) would help to encourage this and would also serve to put information into the public domain about the relevant domestic legislative and regulatory regime, which may be highly relevant to Stakeholders.

We support **paragraph 16bis** requiring details of flag and port States to be used in the proposed operations. Knowing the States involved, insofar as possible, at an early stage enables bilateral outreach by the ISA where appropriate. We consider this essential to ensure a comprehensive inspection and enforcement regime, whereby ISA can rely upon (and require) the cooperation and support of States where domestic investigation or enforcement may be required.

## Section II

### Information relating to the area under application

17. Define the boundaries of the area under application by attaching a list of geographical coordinates (in accordance with the [World Geodetic System 84] [and a georeferenced file and a map with the limits of the requested area]

## Section III

### Technical information

18. Provide detailed documentary proof of the applicant's technical capability, or access thereto, to conduct the Exploitation and to Mitigate Environmental Effects.

19. Provide documentary proof that the applicant has the ability to comply with relevant safety, labour and health standards and is able to apply its policies in a nondiscriminatory and gender-sensitive way.

20. Provide a description of how the applicant's technical capability will be provided through the use of in-house expertise, subcontractors and consultants on the proposed Exploitation activities. ~~[Provide organograms of staffing, and staffing data provided should be disaggregated by gender].~~

20. bis. [Identify the in-service and planned submarine cables and pipelines in, or adjacent to, the area under application; and provide documentary proof of the measures discussed or agreed between the applicant and the operators of the cables and pipelines to reduce the risk of damage to the in-service and planned submarine cables and pipelines].

~~[20.ter. Provide evidence that the applicant has demonstrated a satisfactory record of past operational performance and compliance, both within the Area and in other States' jurisdiction].~~

We do not support the deletion of **paragraph (20ter)**. The Regulations enable the ISA to bar Company Principals involved in previous serious violations of an ISA Contract. So evidence as to that track record is a relevant factor in the LTC and the Council's assessment of an application. As noted above, for clarity and consistency it may be sensible to refer to "Company Principals" in this Annex (which should be defined in the Schedule, to ensure common understanding that this pertains to the persons taking key operational and management decisions).

## Section IV

### Financial information

21. Attach such information, in accordance with the applicable Standards and taking into consideration the Guidelines, [to enable the Council to determine] [to assist the Authority in determining] whether the applicant has [or will have] access to the financial resources to carry out the proposed Plan of Work and fulfil its financial obligations to the Authority, as follows:
  - (a) If the application is made by the Enterprise, attach certification by its [competent authority] [Director-General] that the Enterprise has the necessary financial resources to meet the estimated costs of the proposed Plan of Work;
  - (b) If the application is made by a State or a State enterprise, attach a statement by the State or the Sponsoring State certifying that the applicant has the necessary financial resources to meet the estimated costs of the proposed Plan of Work; and
  - (c) If the application is made by an entity, attach copies of the applicant's audited financial statements, including balance sheets and income statements and cash flow statements for the most recent 3 years, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, noting that:
    - (i) If the applicant is a newly organized entity and a certified balance sheet is not available, attach a pro forma balance sheet certified by an appropriate official of the applicant;
    - (ii) If the applicant is a subsidiary of another entity, attach copies of such financial statements of that entity and a statement from that entity, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, that the applicant will have the financial resources to carry out the Plan of Work; and
    - (iii) If the applicant is controlled by a State or a State enterprise, attach a statement from the State or State enterprise certifying that the applicant will have the financial resources to carry out the Plan of Work.
22. If, subject to Regulation 22, an applicant seeking approval of a Plan of Work intends to finance the proposed Plan of Work by borrowing, attach details of the amount of such borrowing, the repayment period and the interest rate, together with the terms and conditions of any security, charge, mortgage or pledge made or provided or intended to be made or provided or imposed by any financial institution in respect of such borrowing [and the predicted debt-to-equity ratio].
23. Provide details of any Environmental Performance Guarantee proposed or to be provided by the applicant in accordance with Regulation 26.

In relation to **paragraph (21)(a)**, we note that Annex IV to UNCLOS provides for the financing of the Enterprise, and requires the Enterprise to maintain and publish audited annual accounts. As such, it seems to us appropriate that full information about the funding and its source should be required in the Enterprise's application, in the interests of transparency and fairness.

In **paragraph 22**, We support the text in square brackets. An applicant's debt-to-equity ratio is a useful indicator of solvency and risk that will assist the ISA in its assessment of financial capabilities.

## Section V

### Undertakings

24. Attach a written undertaking that the applicant will:

- (a) Accept as enforceable and comply with the applicable obligations created by the provisions of the Convention and the rules, regulations and procedures of the Authority, the decisions of the relevant organs of the Authority and the terms of its contracts with the Authority;
- (b) Accept control by the Authority of activities in the Area as authorized by the Convention; and
- (c) Provide the Authority with a written assurance that its obligations under the Exploitation Contract will be fulfilled in good faith.

The undertakings contained in **paragraph (24)** are a requirement of UNCLOS and thus we support their inclusion. We note that the same matter is repeated, but with varied wording, in DR7 (Institutional Matters), and would suggest that these are aligned, to avoid duplication especially where there are inconsistencies between the two versions.

We also note **other undertakings** are required in the body of the regulations or by UNCLOS, which have been omitted from this section of Annex I. We suggest they should be added here. E.g. regarding parent company liability (DR7 and Annex XI), regarding compliance with sponsoring State(s)' national laws and measures (DR7), and regarding transfer of technology (Article 6(3) of Annex III of UNCLOS)

## **Section VI**

### **Previous contracts with the Authority**

- 20. Where the applicant or, in the case of an application by a partnership or consortium of entities in a joint arrangement, any member of the partnership or consortium has previously been awarded any contract with the Authority, attach:
  - (d) The date of the previous contract or contracts;
  - (e) The dates, reference numbers and titles of each report submitted to the Authority in connection with the contract or Contractors;
  - (f) The date of termination of the contract or contracts, if applicable;
  - (g) [The final report on the results of Exploration and baseline investigations, including results of testing equipment and operations in the Exploration area.]

## **Section VII**

### **Attachments**

- 25. Attach the following attachments and Annexes: