

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 III

Financing Plan

A Financing Plan should include [supported by written **evidence** ~~or other relevant source~~]:

- (a) Details and costing of the mining technique, technology and production rates applicable to the proposed **Exploitation** ~~mining~~ activities;
- (b) Details and costing of the technological process applicable to the extraction and on-board processing of Mineral ore;
- (c) Details and costing of the technical skills and expertise and associated labour requirements necessary to conduct the proposed **Exploitation** ~~mining~~ activities;
- (d) Details and costing of regulatory requirements relevant to the proposed mining activities, including the cost of the preparation and implementation of the Environmental Management and Monitoring Plan and Closure Plan;
- (e) Details regarding other relevant costing, including capital expenditure requirements;
- (f) Details of advance agreed sales, and all expected revenue applicable to the proposed **Exploitation** ~~mining~~ activities;
- (g) A detailed cash-flow forecast and valuation, excluding financing of the proposed **Exploitation** ~~mining~~ activities, clearly indicating applicable regulatory costs;
- (h) Details of the applicant's resources or proposed mechanisms to finance the proposed **Exploitation** ~~mining~~ activities, and details regarding the impact of such financing mechanisms on the cash-flow forecast and debt-to-equity ratio;
- [(i) Details of any loans or planned loans, and the institutions making the loans, with an indication whether those institutions apply ~~relevant best practice international standards or their equivalent~~ [the Equator Principles or the International Finance Corporation performance standards, or equivalent.]; and

[(j) Details of any insolvency proceedings, currently disqualification from acting as a company director or trustee of any fund organisation, unspent convictions for any financial crime or offence involving dishonesty, in any jurisdiction, involving key personnel from the Contractor's management, senior staff, ownership, parent company, subsidiaries or sub-contractors.]

Our understanding is that the payment regime for Exploitation is still under negotiation, and may include elements that relate to **Contractor profits, and/or local tax obligations**. Also yet to be developed is the ISA's required **Economic Assistance Fund** (to compensate land-based mining economies adversely affected by minerals from the Area). To establish this Fund, the Economic Planning Commission (not yet operationalised) will require data about metal markets and forecast production and sales. Finally, the **Enterprise** (not yet operationalised) will be able to enter

into joint ventures with some Exploitation Contractors and will need relevant understanding of their financial models to support its decisions in that regard. Management of these three features of the regime will require specific information flow to the ISA. Whilst these three aspects of the ISA's regime remain in flux, we suggest a note is placed here, to check before finalisation of the Regulations that this Annex III is sufficiently comprehensive to obtain from Contract applicants all the relevant information that the ISA may need in an application to facilitate the performance of all the ISA's functions.

In the chapeau, we are unsure what "*other relevant source*" might take the place of evidence. If such a relevant source is contemplated as the word of the Contractor, as the entity submitting the Financing Plan, we are firmly against such self-certification. If other documents or forms of support are contemplated, we would welcome an explanation from the proponents of that text.

In **sub-paragraph (h)**, we are glad to see debt-to-equity ratio included. 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.

We support the inclusion of **sub-paragraph (i)** and the reference to the Equator Principles, the International Finance Corporation performance standards, or equivalent. Such widely-applied standards provide sustainability requirements that cover key areas, such as environmental protection, labour conditions, and community engagement, making them a valuable tool for guiding responsible mining practices across a range of contexts.

Regarding drafting in **sub-paragraph (j)**, we believe there are some transcription errors: "*currently*" should be "*current*", "*convections*" should be "*convictions*". But broadly we welcome the inclusion of sub-paragraph (j). We continue to believe that the ISA's due diligence should include examination of the credentials of key personnel, and disclosure of any offences or bankruptcies that may affect their suitability to act in such a post. This should be matched by evaluation criteria in the regulations (and potentially supported by Standards) that shows what credentials are considered acceptable, and which are sufficient to cause concern about the eligibility of the applicant. Applicants should also be given an opportunity to explain how they see any risk around such matters, and how it is being managed. It may be helpful to integrate into this sub-paragraph (j) other personnel track record information that is also required in the Regulations e.g. pursuant to DR77(4) and DR83 bis