

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.

Section 4

Consideration of an application by the Council

Regulation 16

Consideration and approval of Plans of Work

1. The Council shall consider the reports and recommendations of the Commission and any other relevant subsidiary body established in accordance with the Convention and the Agreement, relating to approval of Plans of Work in accordance with paragraph 11 and paragraph 12 of Section 3 of the Annex to the Agreement, after due consideration, and within 60 ~~D~~days unless the Council decides to provide for a longer period, the Council shall approve or disapprove the Plan of Work.

2. If the Council does not take a decision on a recommendation for approval of a Plan of Work within 60 ~~D~~days or such other time period as has been established by the Council, the Plan of Work shall be deemed to have been approved by the Council at the end of that period.]

~~3. The Council shall disapprove a plan of work if any requirement of Regulation 13 is not fulfilled.~~

~~3. — Alt. The Council shall, when approving a Plan of Work, request the Secretary-General to ensure that the contract to be concluded incorporates all conditions outlined in the draft Plan of Work and the accompanying plans, as well as any additional conditions requested by the Commission or the Council.~~

~~4. The Council shall consider the reports and recommendations of the Commission relating to approval of Plans of Work in accordance with paragraph 11 of Section 3 of the Annex to the Agreement.]~~

Comment

Several delegations proposed the removal of paragraph 3, 3 Alt. and 4 on the basis that their stipulation is redundant/unnecessary. These are now proposed to be deleted.

For DR16, like other delegations, including Costa Rica, Belgium, Denmark and the DSCC, who spoke during the March 2024 Council session, we prefer deleting **paragraph (2)**. While we appreciate that this wording is derived from paragraph 11 of section 3 to the Annex of the 1994 Agreement, we would urge the Council not to allow the situation to occur where a **Plan of Work for Exploitation is inadvertently approved by default** and without positive approval from the Council. Instead, a mechanism could be implemented to ensure the 60-day period does not lapse without decision from the Council. For example, there should be an automatic extension of the time period, if the Council is not due to meet within that 60-day deadline. We note as well that DR16 does not include an equivalent presumption of deemed disapproval, where the recommendation from the LTC was for disapproval and where the Council does not

take a decision in time, which seems one-sided. Also, paragraph (2) is silent as to the date from which the 60-day time limit runs, creating unhelpful ambiguity for a provision with potentially huge consequences.

We thought now-deleted **paragraph (3 alt)** was a helpful provision (though in our view mislabelled, as it was not an alternative.) Without (3 alt) there may be a disconnect between the recommendations of the LTC on specific conditions that should be included in the plan of work in the form of the contract and the Council's decisions on those, and the actual conditions in the contract that is issued by the Secretariat under DR17. In our view, it behoves the **Council to maintain control and direction over the contents of a contract** the Council is approving, and not to inadvertently open its contents to negotiations between the Secretariat and the applicant. We would however see merit in moving the substance of (3 alt) to DR 17 ('The Exploitation Contract').