

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.

Regulation 18 ter.

Suspension or tTermination of an Exploitation Contract

1. An Exploitation Contract can only be terminated:

- (a) By the mutual consent of the parties;
- (b) By reason of termination of State sponsorship, pursuant to Regulation 21 and without the Contractor having secured an alternative sponsorship;
- (c) By the Contractor in accordance with the terms of the Exploitation Cecontract, as covered by section 10 of ~~the~~ Annex X to these Regulations;
- (d) By the Authority in accordance with the terms of the Exploitation Cecontract, as covered by section 12 of ~~the~~ Annex X to these Regulations; [or]

[(e) By expiry of the term of the Exploitation Cecontract, without extension.

2. Any [suspension or] termination of an Exploitation Cecontract by the Authority shall be by written notice to the Contractor, through the Secretary-General, which shall include a statement of the reasons for taking such action. [Unless a different time period is indicated in these Regulations,] tThe [suspension or] termination shall be effective [60 Days] after such written notice, unless the Contractor within such period disputes the Authority's right to [suspend or] terminate the Exploitation Cecontract in accordance with Part XI, Section 5, of the Convention, in which case the Exploitation Cecontract shall only be [suspended or] terminated in accordance with a final binding decision in accordance with Part XI, Section 5, of the Convention.

[3. Nothing in this regulation shall relieve a Contractor of any of its obligation or liability under its Exploitation Contract, and the Contractor shall remain responsible and liable to the Authority for the performance of his obligations under its Exploitation Contract in the event of any termination.]

Comments

- Different views appear on the reference to suspension in draft regulation 18 ter. Either the draft regulation should be updated to fully include suspension, including updating the title and cross reference to draft regulation 29 bis. and align with this draft regulation. Alternatively, and proposed by a delegation, all references to suspension should be removed from draft regulation 18 ter. to create clarity and underline that the draft regulation is limited to instances of termination. The processes for suspension are already dealt with under draft regulation 29 bis. This should be discussed and settled.

We prefer that DR18 ter addresses **termination only**. We consider that suspension is better applied to activities under a contract – we are less clear how a contract itself can be suspended. There are various circumstances throughout the

Regulations in which suspension can be triggered – more than for contract termination. DR29 bis covers the procedure that must be followed in all instances of suspension of Exploitation activities – but not the grounds for suspension; these are dispersed throughout the regulations. Suspension may be a precursor to termination, but the two are different regulatory responses, triggered by different events. There seems no need to try to add suspensions to this DR18 ter, which should instead focus on both the grounds and procedure for Contract termination.

- Some delegations have suggested to retain paragraph 1(e). It has been retained in square brackets.
- Several delegations have raised concern that the 60 Days notice period does not align with particular circumstances in which suspension or termination are envisaged under the Regulations. Consequently, the phrase “Unless a different time period is indicated in these Regulations” have been proposed inserted to accommodate for any concerns.
- Paragraph 3 is a proposal received from a Regional Group during the first part of the twenty-ninth session, which gained support from several delegations.

We appreciate that **paragraph (e)** had been deleted because the proponent(s) of that deletion consider that expiry should be distinguished from termination. However, we consider it helpful, for the avoidance of doubt, to state in the Regulations that an Exploitation Contract automatically ends upon the **expiry** date (where there is no renewal).

We agree with the insertion of ‘*unless a different time period is indicated...*’ in **paragraph (2)** to cover e.g. the automatic termination in DR21 (where the Contractor’s State sponsorship is withdrawn and not replaced). We would also suggest a new insertion here, to give the ISA an explicit **power to suspend Exploitation activities (pursuant to DR29 bis) pending the outcome when a Contractor disputes a decision to terminate the Contract**. This is to avoid e.g. a Contractor, who the ISA has found to be in serious, persistent and wilful breach of the Contract, continuing to conduct exploitation activities during what may be lengthy court proceedings.

The addition of **paragraph (3)** seems sensible (and mirrors DR21(7) on termination of sponsorship). We presume that the intention is to continue to hold the Contractor (i) responsible to undertake any acts required to close the Exploitation operations and to settle debts to the ISA; and (ii) liable for any acts undertaken prior to Contract termination. The drafting could perhaps be made more precise to describe this? (As drafted, we wonder if it could be interpreted that the Contractor continues to be responsible to undertake Exploitation and all activities required by the Contract, even after Contract termination - which makes no sense and is surely not the intention). We suggest as an alternative “*Nothing in this regulation shall discharge the Contractor from any obligations accrued prior to the Contract’s termination, nor shall termination affect any legal rights and obligations created during the Contract.*”