

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 20

### Term and ~~renewal~~[extension] of Exploitation Contracts

1. The maximum initial term of an Exploitation Contract is 30 years ~~[from the commencement of Commercial Production]~~ [from execution of the Exploitation Contract]. ~~[Each extensionrenewal period shall be a maximum of [5] years].~~

An application to ~~extend~~renew an Exploitation Contract shall be made in writing addressed to the Secretary-General and shall be made no later than [2] years before the expiration of the initial period ~~[or extensionrenewal period]~~ of the Exploitation Contract.

2. When submitting an application to extent an Exploitation Contract, t~~The Contractor shall supply a revised Plan of Work, a revision of all accompanying plans in accordance with Regulation 7, as well as any~~ such documentation as may be specified in the Standards and Guidelines. ~~If the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes according to Regulation 57, the contractor shall submit a revised Plan of Work [and a revision for all accompanying plans in accordance with Regulation 7]. [The [Secretary-General]] Contractor]~~ shall conduct a consultation process on the revised Plan of Work, with all States and Stakeholders in accordance with Regulation 93 bis and 93 ter.

3. The Commission shall consider the application to ~~extend~~renew an Exploitation Contract, along with any revised documents or responses prepared by the Contractor pursuant to Regulation 93 bis (9) [at its next meeting] provided the documentation required under paragraph 3 or pursuant to Regulation 93 bis (9) has been circulated at least ~~[30]~~[60] Days prior to the commencement of that meeting of the Commission.

4. ter The Commission shall submit its report and recommendations to the Council regarding an application to extend an exploitation contract no later than 120 Days from the date of the completion of the requirements for review of updated Environmental Plans, in accordance with Regulation 11, or from the date of the completion of the amendments to the revised or a new Plan of Work, in accordance with Regulation 14, if any, whichever date occurs later.

5. In making its recommendations to the Council under paragraph 6 below, the Commission shall examine and assess applications in accordance with Regulation 12, against the criteria contained in Regulation 13, and take account of any report on the review of the Contractor's activities and performance under a Plan of Work under Regulation 58, as well as any other relevant information from, inter alia, performance assessments, annual reports, and environmental reports, inspection reports, compliance

reports, ~~[and]~~ monitoring ~~–[and compliance data], [third party or whistle blower complaints],~~ and legal actions against the contractor.

6. The Commission ~~[shall]~~ ~~[may]~~ recommend to the Council the approval of an application to ~~extend~~~~renew~~ an Exploitation Contract, and an Exploitation Contract ~~[shall]~~ ~~[may]~~ be ~~extended~~~~renewed~~ by the Council provided that:

(a) ~~Alt.~~ [The term of ~~extension~~~~renewal~~ reflects the expected economic life of the mining project, taking into consideration such factors as the depletion of the ore, the useful life of mining equipment and processing facilities and commercial viability.]

(b) The Contractor is in compliance with the terms of its Exploitation Contract and the rules, regulations and procedures of the Authority;

(b) bis The Contractor's ~~[final]~~ report sufficiently demonstrates that the Contractor has met and complied with all Strategic Environmental Goals ~~and~~ Objectives, ~~and~~ thresholds] and ~~can~~ demonstrates that the PRZs and IRZs met their objectives, and that the Contractor's application for an extension includes designation of suitable PRZs and IRZs for the extension period in accordance with Annex X bis.

(c) The Exploitation Contract has not been terminated earlier;

[(c) bis The Contractor is able to demonstrate that all related contractual obligations, such as the requirement to maintain insurance coverage at all times during the conduct of Exploitation activities, will extend or continue to remain in force for the duration of the extension period.]

(d) The Contractor has paid the applicable fee in the amount specified in appendix II;

(e) ~~(f)~~ [The Sponsoring State has reconfirmed their sponsorship of the Contractor by reissuing their certificate of sponsorship.]

~~78.~~ Any ~~extension~~~~renewal~~ of an Exploitation Contract shall be effected by the execution of an instrument in writing by the Secretary-General or duly authorized representative, and the Designated Representative or the authority designated under Regulation 5(2). The terms of an ~~extended~~ ~~renewed~~ Exploitation Contract shall be those set out in the standard Exploitation Contract annexed to these Regulations that is in effect on the date that the Council approves the ~~extension~~~~renewal~~ application.

~~89.~~ An Exploitation Contract in respect of which an application for ~~extension~~~~renewal~~ has been made ~~[shall]~~ ~~[may]~~, despite its expiry date, remain in force until such time as the ~~extension~~~~renewal~~ application has been considered and its ~~extension~~~~renewal~~ has been granted or refused.

#### Comments

- It has been suggested to use “extension” instead of “renewal” to better align with the wording of other draft regulations.

We have no preference between ‘extension’ or ‘renewal’. We would however like to see wording inserted in **paragraph (1)** - or alternatively in DR15(1 bis) (on the LTC’s recommendation for approval of a Contract) - to emphasise that the ISA should aim to award the minimum contract period appropriate for the plan of work, to avoid the **maximum 30-year term** being awarded every time when that may not be the best way to achieve the ISA’s various objectives, policies and principles. Similarly, we suggest paragraph (1) should refer to ‘*Any extension period approved in accordance with this regulation*’ rather than ‘*Each extension period*’. The latter rather implies that extension periods are presumed (and plural). We would prefer the Regulations to empower the Council to issue extensions only where expedient, not by default.

- During the first part of the twenty-ninth session, there seemed to be most support for the commencement date to be linked to the execution of the Exploitation Contract. Also, most delegations supported an extension period of 5 years.

We support the amendment to ensure the **Contract term runs from date of execution** (signature). Commercial Production is a moveable date largely outside of the ISA's control, which may not start until some years into the Contract. To run the Contract term from such an unknown date would present significant uncertainty and differentiated terms between Contractors and has the potential to be misused by Contractors who are not actually ready to move to Exploitation.

- It has been suggested by several delegations that applications to extend Exploitation Contracts should require that the Contractor submit a revised work plan in all instances, not only when the Contractor deems that changes amount to a material change.
- In paragraph 2 most delegations supported the proposal of a period of two years before the expiration of the initial period or extension period. It has been updated to plural to align with the remaining revised consolidated text.
- It has been suggested to remove the brackets around the final sentence of paragraph 3.

We support the changes referred to in the comment box, for **paragraphs (2) and (3)** in relation to the **2-year notice period**, and the **need to submit a revised Plan of Work for any extension** request. If the changes to a Plan of Work at the time of renewal are minimal (or even zero, as one Contractor's submission on this regulation had suggested), then the Contractor can simply submit the same Plan of Work, which seems a minor demand. We do doubt, however, that the Plan of Work would remain unchanged. Presumably a renewal would look at new mining sites within the Contract Area, would require new timescales and financing arrangements, as well as new training commitments, and would need to take into account the impacts already incurred in the Contract Area from the preceding mining operations. It seems likely that there may be various new and unanticipated developments in renewal decisions, especially those taking place some 30 years after the original application, and it is our view that the LTC and Council should fully take these into account in a decision-making process run according to DRs10-15, to exercise appropriate levels of due diligence and due process. We also believe paragraph (2) would make better sense if it started with a general statement that "*A Contractor may apply for an extension of its Exploitation Contract...*" and then went on to specify the timeframe, that it must be in writing etc. It reads oddly to set out these procedural requirements, without first stating the right to apply. Paragraph (3) has a typo '*extent*' should read '*extend*'.

We are perturbed to see the apparent confusion at the end of paragraph (2) as to **whether the Contractor or the ISA should be responsible to hold a consultation** on an extension decision (by the ISA). This is an issue we have raised repeatedly. The ISA (or the sponsoring State) can require the Contractor to hold consultations on its development of the plan of work before it is submitted (and then that is the Contractor's responsibility to manage). But the ISA itself must run its own consultations with its own stakeholders on its own decision-making about that Plan of Work.

- It is not clear what "*compliance data*" refers to in paragraph 5 and whether it is something different or additional to the compliance reports. Therefore, it is suggested to delete the reference to "*compliance data*".
- Previous draft regulation 20(6)(b)bis has been placed in the revised suspense document.

The Comment Box explains deletion of the wording "*compliance data*" in **paragraph 5** but not deletion of the wording "*third-party or whistle-blower complaints*". We appreciate that complaints need investigating and verifying to become reliable evidence about a Contractor's performance etc. We do not suggest that decisions are taken on the basis of unconfirmed complaints, but we do want to see intelligence received from external sources valued and used in the ISA's compliance work and decision-making. Indeed, we note that systems to receive such complaints are as a basic tool almost universally used by regulators to receive information that may inform its own inspection and compliance work. Yet such mechanism does not currently exist at the ISA. We consider it a matter of urgency that a **third-party complaints procedure** should be established at the ISA, alongside a **whistle-blower policy** for any disclosures received from persons (e.g. employed by contractors or the ISA) who may fear reprisals. We have already seen circumstances where persons employed by contractors prefer to go to the media with issues of concern they observe, rather than report concerns to the contractor or the ISA. We would like to see i) the Council issue a decision this session to instruct the LTC to develop such policies and procedures now, covering all activities in the Area, and all areas of ISA work. And ii) we request reinsertion of the wording here.

For **paragraph (6)**, we prefer ‘may’ (over ‘shall’), so that the Council (and LTC) retain discretion on the extension of contracts. It is possible that not all situations whereby the Council wish to disapprove contract extension are captured in the sub-paragraphs of paragraph (6). Where UNCLOS in Annex III speaks to extensions that ‘shall’ be approved, this relates to exploration only. No such wording is used in UNCLOS to our knowledge in relation to exploitation. We presume this must have been intentional by the drafters of UNCLOS. Instead UNCLOS Annex III speaks to a duration of an exploitation contract allowing the ISA opportunity to amend terms and conditions over time. There is no right to obtain renewals or extensions of exploitation contracts, and the ISA should retain appropriate control over this matter.

Paragraph 6 used to contain a **sub-paragraph (e)** that required a check of the extension application against all DR13 criteria. We are not sure why this has been deleted, as that seemed a sensible approach for the ISA to be meeting their due diligence obligations and to ensure a level playing field for all Contractors (and could lead to further streamlining of the sub-paragraph list).

**Paragraph (6)(b)** covers whether the Contractor “*is in compliance[.]*”. We think this should be broadened to a consideration of the Contractor’s compliance record throughout the Exploitation Contract. In a situation in which a Contractor had been serially in serious breach of its contract but had remedied the breaches by the time of extension application, we think the Council should be able to take the past breaches into account in its decision.

Previous **paragraph (6)(b bis)**, now located in the suspense document, required assessment of cumulative environmental impact. We suggest reinstatement. It enables the ISA not to renew a contract for reasons outside of the Contractor’s own control and past track record such as unacceptable cumulative impacts that may arise from the approval of multiple mining operations. Controlling numbers of simultaneous mining operations will be an important element to the ISA’s application of the precautionary approach. The ISA should ensure it has the necessary powers to exercise this control.

**Paragraph (7)** has the SG issuing a Contract extension, but the step where the Council requests the SG to do this is missing from the regulation.

We recall that previous versions of **paragraph (9)**, at the urging of Council members, contained more parameters to enable Council control of the Contract decision-making e.g. using ‘*may*’ rather than ‘*shall*’, or setting a maximum time for this unofficial and default Contract extension situation of 3 months. The concern is that without parameters like this, a Contractor could artificially prolong the application period (for example by submitting incomplete documents, and periodically providing revised versions over time), to extend its Exploitation Contract without due process and a renewal decision. For that reason, we prefer ‘may’ (and could clarify that this is a decision for the Council).

As a general point, we note that DR20 in this Consolidated Regulations text does not limit the number of Contract extensions, and we wanted to check that the Council is content with the idea of a **potentially infinite Contract**.