

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 29**

**Reduction or suspension in production**

1. Notwithstanding Regulation 28, a Contractor may temporarily reduce or suspend production [ but shall notify **[in writing]** the Secretary-General **[and the Sponsoring State]** thereof [and provide the rationale for such a reduction or suspension] [as soon as practicable thereafter]**[within 7 Days from the date of the reduction or suspension]**. Such reduction or suspension may be for a period of up to 12 months.

2. If the Contractor proposes to continue the reduction or suspension for more than 12 months, the Contractor shall notify the Secretary-General in writing, at least **[30 Days]** prior to the end of the 12-month period, giving its reasons for seeking a further reduction or suspension of that length of time.

**Comments**

- Several delegations supported the suggested deletions in paragraph 2 and paragraphs 3-4 in their entirety. The text has been placed in the Revised Suspense Document in order for it to feed into relevant Annexes, Standard and Guidelines.
- It has been suggested by a delegation to insert a specific time period in paragraph 1 for the notification to be given.

We agree in principle with the amendments made to DR 29, though we have some serious concerns with the overall picture, as set out below.

In the event of a **reduction in production** so that the Commercial Production threshold is not reached but the Contractor is still recovering some volume of minerals - **is a royalty payable on those minerals?** It should be. But DR64 ('Royalty Payment') as written may make the payment of a royalty contingent on Commercial Production. It is of course important that DR29 does not create a loophole whereby lower-level extraction of minerals could take place for years, at the unilateral decision of the Contractor, recovering <99% the rate of Commercial Production, with no royalty obligation attaching to those minerals. To that end, we have suggested text that explicitly closes this potential loophole in DR64.

This DR29 contains **no decision by the Council** to approve the suspension or reduction, nor restriction on how long the suspension or reduction can persist, nor examination of the reasons for the suspension or reduction. We presume this will be covered instead by DR29bis, which sets out general procedures on suspensions. In particular we note that paragraphs (4), (7) and (8) of DR29bis collectively require the Contractor to report on the reasons for the suspension and empower Council decision(s) to (a) allow continuation of the suspension, (b) require the Contractor to recommence Exploitation, or (c) require the Contractor to move the project to its Closure phase. It is thus important (to avoid DR29 being an open-ended and permissive regulation) that this DR29bis language be retained, and that the scope of DR29bis is clearly applied to a DR29 suspension – i.e. a suspension in production at the contractor's request. Paragraph (1) of DR29 should include a final sentence: Regulation 29bis shall govern procedure for such suspensions.

We also think it would also be helpful if paragraph (1) should require the Contractor to specify in their notification the period of time for which they are anticipating the temporary suspension of or reduction in production to inform the Council's deliberation.