

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 39**

**Books, records and samples**

1. A Contractor shall keep a complete and proper set of books, accounts and financial records, consistent with internationally accepted accounting principles, which must include information that fully discloses fall revenue and actual and direct expenditures liabilities for Exploitation, including capital expenditures and operating costs and such other information as will facilitate an effective audit of the Contractor's expenditures and costs.

[1. bis. The Contractor shall keep the books, account, and records pursuant to paragraph [1 at a place agreed between the Contractor and the [Compliance Committee]] [at a place specified in the Exploitation Contract], and shall make them available for inspection and audit in accordance with these Regulations.]

2. A Contractor shall maintain maps, geological, mining and Mineral analysis reports, production records, processing records, records of sales or use of Minerals, records of port inspections, customs records, processing plant receipt data or records, environmental data, archives and samples and any other data, information and samples connected with the Exploitation activities in accordance with Standards and taking into consideration the Guidelines.] [the Authority's data and information management policy].

3. [To the extent practical, a] [A] Contractor shall keep, in good condition, a representative portion of samples or cores, as the case may be, of the Resource category, from each sample collection period identified in the applicable [relevant] Standard [s] and [Guidelines, together with biological samples, obtained in the course of Exploitation until the termination of the [Exploitation Contract] [Closure Plan]. Samples shall be maintained taking into account the relevant Guidelines, which shall provide the option for the Contractor to maintain them itself or to have such maintenance performed on its behalf in whole or in part by a third party.

4. Upon request of the Secretary-General or, [Inspectors, or Compliance Committee,] the Contractor shall deliver to the Secretary-General for analysis a portion of any sample or core obtained during the course of Exploitation activities.

5. A Contractor shall, subject to reasonable notice, permit full access by the Secretary-General or [Inspectors]/[Compliance Committee] to the data, information and samples.

**Comments**

- There is disagreement between the delegations as to whether Paragraph 1. bis is necessary. The President considers that, if this provision is retained, it is preferable to designate the place of the storage of the relevant documentation in the contractual framework, as opposed to deferring that issue to a further agreement, to be negotiated separately, between the competent organ of the Authority and the contractor.

- Delegations are also invited to consider the relationship between paragraph 1. bis. and the similar provisions of draft regulation 74.
- Across the remainder of the text, it is proposed to remove brackets in the case of proposals not opposed to.
- Paragraphs 1. bis. 4 and 5 might need to be updated based on the outcome of discussions in respect of the compliance mechanism.

Generally, we support all the edits in DR39 but continue to see **overlap with DR74** (now entitled '*Proper books and records to be kept*'). As these are negotiated, they risk conflicting with each other. We therefore repeat our suggestion that these two regulations be aligned to remove duplication or merged. As DR39 is the broader provisions, our suggestion is that DR74's content be integrated into DR39, and DR74 be deleted.

We recommend retaining '**liabilities**' in paragraph (1) to ensure a Contractor's debts are captured by the reporting requirement (and suggest adding the word 'and' before '*liabilities*', to make sense of the sentence).

We support retention of **paragraph (1)(bis)** to avoid essential paperwork being held in a place potentially inaccessible to the ISA, for example in the jurisdiction of a State that is not a member of the ISA. We agree with the President's comment that each specific arrangement can be captured in the Contract.

Generally we suggest that DR39 also clarifies that both physical and digital records should be kept, as digital access may be crucial for ISA inspections and audits.