

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 42**

**Restrictions on advertisements, prospectuses and other notices**

1. No statement shall be made in any prospectus, notice, circular, advertisement, press release or similar document issued by the Contractor [or with its implied permission, in which it is stated or suggested], or with the express or implied permission of the Contractor, or in any other manner or through any other medium, claiming or suggesting, whether expressly or by implication, that the Authority has or has formed or expressed an opinion over the commercial viability of Exploitation in the Contract Area.

[2. If there is any indication or reason to believe that this regulation has been contravened, the Compliance Committee shall take the matter up for urgent consideration, including to determine if any measures against the Contractor under Regulation 103 would be appropriate, as well as whether to recommend to the Council that an investigation be carried out against all person or persons involved. The Secretary-General shall gather and forward all available and potential information and evidence in support of such allegation to the Compliance Committee. The Secretary General shall also notify the relevant sponsoring State, who shall cooperate with the Authority as well as consider further action pursuant to its national legislation.]

[3. This Regulation shall equally apply to Applicants and prospective Contractors. If the Authority determines that this provision has been contravened, the application for the approval of a plan of work shall be dismissed, or the approval shall be reserved in instances where approval has already been granted, as the case may be.]

**Comment**

It has been suggested by one delegation to insert paragraphs 2 and 3 to describe the procedure to follow if the provision is contravened, and that the consequences also apply to Applicants and prospective Contractors.

We **support the new inclusions to DR42** (though we are unsure whether the inserted wording into paragraph (1) is an alternative, or an addition – and if the latter the drafting may need better integrating).

We would like to see one further addition to **expand the provision to cover also representations by Contractors / applicants about how future decisions by the ISA may be exercised**, for example the likely award by the ISA to the Contractor of a future contract or contract extension. The rationale for this proposal is to avoid prospective applicants or Contractors over-presuming the ISA's position in their discussions with investors or other stakeholders, which may in turn lead to undue pressure on ISA decision-making and/or litigation embroiling the ISA. This could be done by adding the following text at the end of paragraph (1): '... or that any future decision at the discretion of the Authority, with relevance to the applicant or Contractor, will be exercised in a particular way'.

We also wonder whether there should be an equivalent provision in the draft Regulations, in line with the principle of non-discrimination, setting a **prohibition for representatives of the Authority** from undertaking activities that could demonstrate (or give a reasonable perception of) one Contractor being promoted or otherwise preferred (above others)?

We note that whatever decision the Council makes about early applications for mining - whether to approve or reject - seem likely to attract legal challenge. The ISA should be making every effort to ensure that not only is each decision substantively defensible, but also that it is procedurally defensible.

A prohibition on any such statements could be tied in with a wider set of rules addressing the interactions between Contractors or other non-state actors and ISA officials. We note that the balance between appropriate access and improper influence has already been a source of controversy for the Secretariat at the ISA, in facing allegations of being too close to mining interests. It would help increase public trust and confidence in the ISA, as well as integrity of decision-making, if there were clear rules in place to manage appropriately and transparently exchanges of views between ISA officials and stakeholders, including registration of interest and disclosure of interactions through a public registry. Useful precedents in this regard can be found e.g. the OECD 's Recommendation of the Council on Principles for Transparency and Integrity in Lobbying and the [International Standards for Lobbying Regulation \(2024\)](#) developed by a coalition of non-state actors.