

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 56

Funding of the Environmental Compensation Fund

1. ~~[In adherence to]~~ [Consistent with] the polluter-pays principle the Fund will consist of, but not be limited to, the following monies:

(a) The prescribed percentage or amount of ~~[fees]~~ [contribution] paid in to the Fund [by Contractors or the Enterprise] after approval of a Plan of Work and prior to the commencement [of activities] ~~[in the Area]~~ under an Exploitation Contract [of Commercial Production] ~~[by Contractors or the Enterprise to the Authority];~~

(b) The prescribed percentage of any penalties paid by Contractors or the Enterprise to the Authority;

~~(c)~~ Any [other] monies paid into the Fund at the direction of the Council, based on recommendations of the Finance Committee;

~~(d)~~ Any income received by the Fund from the investment of monies belonging to the ~~F~~und;

~~(e)~~ An annual levy paid by Contractors or the Enterprise to the Fund [pursuant to a decision of the Council]; and

~~(f)~~ Any [voluntary] contributions [from the Authorities member states];

(g) [Any contributions] paid by Sponsoring States to the Fund; ~~and-~~

[h) Donations or grants from international organisations, non-governmental organisations or other entities committed to environmental protection and sustainability.]

As a general comment on the funding of the ECF, we would be interested to see some **modelling of what quantities are expected** to be held in the ECF, and how this would be met by the proposed sources of money set out in this DR56. We are concerned that a shortfall may be likely and/or that there would be a time lag issue where the Fund would be smallest at the commencement of the first mining operations (when perhaps the risks are highest).

We query the inclusion of proposed sub-paragraphs (f) and (h) (donations from other States or IGOs and NGOs). This appears to undermine or misunderstand the chapeau's invocation of the **polluter pays principle**. These proposals again raise questions for us whether the Council has a mutually agreed position on the purpose of the ECF. The idea that a conservation NGO might be asked to fund compensation to parties harmed by a mining company is utterly bizarre to us.

We would like to take this opportunity to support the broader point we have in recent Council session from numerous delegations, that the **issue of liability should be examined holistically**. Although there are several parts of the draft Regulations whose aim seems to be to channel liability to the Contractors and to ensure access to prompt compensation for persons harmed, we are concerned that liability loopholes remain. These are matters within the Council's remit to resolve via the Regulations and the material to inform this discussion has been made available by the ISA's Expert

Working Group on Liability from 2018, supported by a submission of the African Group to Council in 2019. If liability is not addressed by the Council as an urgent thematic topic, then the legal framework may proceed with gaps likely to lead to conflict and litigation.