

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 6

Certificate of sponsorship

1. Each application by an entity referred to in Regulation 5(1)(b) shall be accompanied by a certificate of sponsorship issued by the State of which it is a national or by whose nationals it is effectively controlled. If the applicant has more than one nationality, as in the case of a partnership or consortium of entities from more than one State, each State involved shall issue a certificate of sponsorship.

2. Where an applicant has the nationality of one State but is effectively controlled by another State or its nationals, each State shall issue a certificate of sponsorship.

[2 bis. For the purposes of issuance of a certificate of sponsorship, the State of nationality means the State under whose law the corporation was incorporated. However, when the corporation is controlled by nationals of another State or States and has no substantial business activities in the State of incorporation, and the seat of management and the financial control of the corporation are both located in another State, that State shall be regarded as the State of nationality.]

3. Each certificate of sponsorship shall be duly signed on behalf of the State by which it is submitted, and shall contain:

- (a) The name, address and contact details of the applicant;
- (b) The name of the Sponsoring State or States;
- (c) A statement ~~accompanied by supporting evidence such as a passport, citizenship certificate, certificate of incorporation or other evidence of registration or nationality~~ that the applicant is:
 - (i) A national of the Sponsoring State; or
 - (ii) Subject to the Effective Control of the Sponsoring State or its nationals.

(d) A statement by the Sponsoring State that it sponsors the applicant together with a description of the necessary and appropriate measures taken by the State to secure effective compliance pursuant to Article 139(2) of the Convention, and to ensure legal recourse for compensation in accordance with Article 235 (2) of the Convention;

~~(e)~~ The date of deposit by the Sponsoring State of its instrument of ratification of, or accession or succession to, the Convention, and the date on which it consented to be bound by the Agreement; and

‡(f) A declaration that the Sponsoring State assumes responsibility in accordance with Articles 139 and 153 (4) of the Convention and Article 4 (4) of Annex III to the Convention.‡

4. States or other qualified applicants in a joint arrangement with the Enterprise shall also comply with this Regulation.

We are generally supportive of new **paragraph (2 bis)**, which we note reflects draft Articles prepared by the International Law Commission. It is our view that a sponsoring State must have a meaningful link with its sponsored Contractor in order for various UNCLOS Part XI requirements to be properly fulfilled. This requires examination of the location of the contractor's ownership, management, assets, and business operations.¹ We welcome more in-depth discussion on the issue of nationality and **effective control** generally, and this proposal in particular, in the next session.

We support the reformulation of **paragraph 3(c)**. Examples of what would constitute supporting evidence might inaccurately pre-empt how 'effective control' would be defined. In any event, this DR6 is about the certificate of sponsorship. DRs 5 or 7 are the correct locations for evidentiary requirements about the applicant.

¹ For a detailed legal analysis, please see Robb S, Lily H, Pecoraro A (December 2024) 'Effective control and state sponsorship in deep seabed mining' Marine Pollution Bulletin volume 209 , <https://www.sciencedirect.com/science/article/pii/S0025326X24010968>