

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 64bis Equalization measure

A Contractor, from the date that its Plan of Work has been approved, shall pay the equalization measure as determined in accordance with the applicable Standard governing the equalization measure.]

Comment

- While the technical rules of the financial terms, including the issue of the equalization measure, is envisaged to be regulated by the applicable Standard(s), it has been suggested that the Regulations clearly stipulate that an equalization measure will be in place.
- In the context of intersessional work, delegations addressed the issue of whether an equalization measure should be devised assuming that certain forms of subsidies are permissible. Since the applicable Standard is now proposed to deal with further, technical rules of this issue, no Draft Regulation addresses this now, and the consideration of relevant regulatory text, including on subsidies (if any), is proposed to happen in the context of work on the draft Standard. Relevant, detailed analyses from intersessional work are available to the delegations.

We believe that it is of the utmost importance to demotivate tax avoidance by contractors, and to comply with Article 13, paragraph 1(c) of Annex III which requires the Authority to be guided by the objective “*to ensure equality of financial treatment and comparable financial obligations for contractors.*”

To that end, we support the inclusion of a requirement for and reference to equalization measures in the Regulations themselves, although the details will be defined in Standards. In this regard we would encourage consideration as to **how this provision can apply equally, and work in practice, for Contractors without a sponsoring State**, such as a State Party who holds an ISA contract directly and the Enterprise.

Separately, we would welcome discussion by the Council as to how the regulations can implement the provisions of the 1994 Agreement (Annex, section 6) which states that there shall be **no subsidization of activities in the Area except as may be permitted under agreements of the World Trade Organisation?** We are unclear whether this has ever been discussed at the ISA. The State funding of ISA Contract activity, and particular complexities about arrangements for onward processing, sale, import, and export of the mineral resources from the Area, makes it hard to know how to apply this prohibition. We are also unclear whether there are any relevant such WTO agreements - though these would appear to be a necessary prerequisite in order for these Regulations to permit subsidization of exploitation in the Area? This is important, not only to ensure compliance with the international regime agreed by consensus, but also because there is great public interest in avoiding introducing new environmentally harmful subsidies. We would be grateful for further information or reassurance with regards this issue on subsidies.