

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 71

Information to be submitted

1. A royalty return shall include the following information for each royalty return period, in accordance with Standards and taking into ~~consideration~~ ~~account the~~ Guidelines:

- (a) The quantity in wet metric tons and dry metric tons of ~~Mineral-bearing~~ ore recovered from each Mining Area;
- (b) ~~The quantity by Mineral in wet metric tons and dry metric tons and value by Mineral in dry metric tons of the Mineral-bearing ore shipped from the Contract Area~~; The value, ~~grades~~ -and the basis of the valuation (by Mineral ~~and Metal~~) of the Mineral bearing ore sold or removed without sale from the ~~Contract Area~~, as verified by a Suitably Qualified Person and supported by a representative chemical analysis of the ore by a ~~C~~ertified ~~L~~aboratory, with the cost of weighing and testing to be borne by the Contractor;
- (c) Details of all ~~Exploitation C~~ontracts ~~and amendments to Exploitation Contracts~~ and sale or exchange agreements relating to the ~~Mineral-bearing ore~~ sold or removed without sale from the Contract Area; and
- (d) A calculation of the royalty payable ~~in accordance with section 3~~, including any adjustment made to the prior royalty return period and a declaration signed by a designated official of the Contractor that the royalty return is accurate and correct.

~~[(e) Details of all revenues and operating costs associated with activities in handling and processing, to the degree available.]~~

2. In respect of a final royalty return period ending on the date of ~~expiry, surrender or~~ termination of the Exploitation Contract, the Contractor shall provide:

- (a) A final calculation of the royalty payable;
- (b) Details of any refund or overpayment of royalty claimed; and
- (c) The quantity and value ~~[(by Mineral and Metal)]~~ of all closing stocks of the ~~Mineral-bearing ore~~.

3. Within 90 Days from the end of a Calendar Year, the Contractor shall provide the Secretary-General and the Sponsoring State or States with a statement from an auditor or certified independent accountant that the royalty calculation for that Calendar Year:

- (a) Is based on proper accounts and records properly kept and is in agreement with those accounts and records; and
- (b) Complies with these Regulations and is accurate and correct.

We wonder if the first sentence to **sub-paragraph (1)(b)** was supposed to be an alternative to (1)(a), or a standalone sub-paragraph (e.g. (1)(a)(bis)?) It does not seem to fit at the beginning of (b). We believe a merging of the two provisions may work best, because we believe it is important:

- For the ISA to track what volume of ore is recovered at the point of recovery (as per current (1)(a)) as this is the moment at which it passes from the common heritage into private ownership of the Contractor, according to the standard contract terms (Annex X). We have no opposition to separate reporting of the amount of ore shipped (as per (1)(b)) in addition, if that is considered useful.
- That any ore recovered from any location in the Contract Area should be included in the royalty return. In case the Contractor is test-mining in areas outside of the Mining Areas. Royalty should be paid on any ore recovered from those activities as well, to avoid creating a loophole in the regime. The wording could be amended to mirror that used in DR74 i.e. *“from each Mining Area and the Contract Area...”*

We are unsure whether amendments from ‘contract’ to “Exploitation Contracts” in **sub-paragraph 1(c)** make sense. Our understanding is that this provision is aimed to cover contracts made with third parties by the Contractor for sale or other onward transfer of the minerals.

We support retaining **sub-paragraph (1)(e)**, which aims to ensure that the Authority is appropriately informed, to the degree possible, of sales beyond the Contract Area, as a means of due diligence with regards the entire value chain. We wish to raise that this is a question not only of environmental standards, but also of social and human rights standards as well as criminality. Although we appreciate that such matters are not directly under the ISA’s jurisdiction for regulatory purposes, the ISA is responsible to ensure that the common heritage resources of the Area are developed for the benefit of humankind as a whole, and this would not be served by enabling downstream processes that, for example, cause human rights abuses, or support criminality. There is a strong movement in the minerals and metals sector towards increased supply chain due diligence and traceability mechanisms (see, e.g. the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals¹ and the recommendations of the UN Secretary-General's Critical Energy Transition Minerals Panel.² The ISA should aim to legislate consistently with, and not to drop below, such global efforts towards supply chain sustainability.

¹ https://www.oecd.org/en/publications/2016/04/oecd-due-diligence-guidance-for-responsible-supply-chains-of-minerals-from-conflict-affected-and-high-risk-areas_g1g65996.html,

² <https://www.un.org/en/climatechange/critical-minerals>