

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 73

Overpayment of royalty

1. Where a royalty return shows any overpayment of royalties, a Contractor may apply to the Secretary-General to request a refund of any such overpayment. Contractors ~~will~~**must** properly demonstrate that an overpayment was made, and support their claim with all necessary documentation and justifications.
2. Where no such request is received by the Secretary-General within 90 Days of the due date of submission of the relevant royalty return, the Authority shall carry forward any overpayment and credit it against a future royalty amount payable under this Part, or, if the Exploitation Contract has expired, refund the amount within 90 Days.
3. Any request to reduce a royalty-related amount paid by a Contractor must be made within 1 year of an applicable financial report after the Day the relevant royalty return was lodged with the Authority.
4. Where any final royalty return shows an amount to be refunded, the Secretary-General shall refund such amount within 90 Days provided he or she determines that such refund is properly due. The Secretary-General may request, and the Contractor shall provide, such additional information or confirmation, as he or she considers necessary to determine that such refund is correct and due to a Contractor.

We support **paragraph (1)**'s requirement for a Contractor to include measures to demonstrate and support claims of overpayment (though we think '*shall*' rather than '*must*' would be more consistent with the rest of the Regulations).

We are unclear what is intended to be covered by **paragraph (3)**. How can a royalty amount be reduced after it has already been paid? What are the grounds for a Contractor to request this reduction? We are guessing that paragraph (3) is intended to cover an overpayment situation, covered also by paragraphs (1) and (2), but this is not at all clear from the drafting and the terminology used in paragraph (3).

We would also recommend including a **role for the Council here, or one of its subsidiary organs** (and possibly an independent auditor), in addition to the Secretary General, in the authorization of refunds.