

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 75

Audit by the Authority

1. The Council, on its own initiative, or upon the request of the Secretary-General or the Commission, may request an audit of the Contractor's books and records and all subcontractors' books and records associated with the Exploitation activities in the Area.
2. Any such audit shall be undertaken at the Contractor's sole cost and shall be performed by fa qualified Independent Auditor approved by the [Council] ~~[Secretary General]~~ in accordance with applicable Standards ~~and taking into consideration the~~ Guidelines.
3. An [Independent] Auditor may, in connection with a liability for a royalty payment:
 - (a) ~~[Audit all corporate offices, plants and the mining and on-board processing facilities with a view to verifying the accuracy of all information reported and the accuracy of the equipment measuring the quantity of Mineral ore sold or removed without sale from the Contract Area];~~
 - (b) Audit any relevant documents, papers, records and data available at the Contractor's offices or on-board any mining vessel or Installation;
 - (c) Require any duly authorized representative of the Contractor to answer any relevant questions in connection with the audit and provide any missing documents, papers, records and data; and
 - (d) Make and retain copies or extracts of any documents or records relevant to the subject matter of the audit and provide a Contractor with a list of such copies or extracts.
- ~~1. [3. bis An Independent Auditor may, in connection with a liability for a royalty payment require assistance from the Inspectors, through the Secretary General, and the Inspectors shall assist the auditors in discharging their functions under this part.]~~
4. For the purposes of an audit the Contractor shall make available to an [Independent] ~~A~~ auditor such financial records and information contemplated as reasonably required by the relevant organ of the Authority to determine compliance with this Part.
5. Members of the Authority, in particular a Sponsoring State or States, shall, cooperate with and assist the relevant organ of the Authority and any [Independent] ~~A~~ auditor in the carrying out of any audit under this Regulation, and shall facilitate access to the records of a Contractor by an auditor and assist in the exchange of information relevant to a Contractor's obligations under this Part.

Comments

- It has been suggested by several delegations that the scope of the audit regulated in draft regulation 75 cannot exceed the competence allotted to the Authority, hence excluding the audit, for example, of processing plants or of “all” corporate offices. There was no opposition to this observation on the floor during the twenty-ninth session. Paragraph 3 (a) is proposed to be adjusted on this basis, removing the reference to “corporate offices” and “plants”.
- References to the auditor has been made consistent in the Revised Consolidated Text as “Independent Auditor”.
- Paragraph 2 needs to be updated when the Inspection Mechanism has been settled.
- Several delegations expressed concerns about or opposition to paragraph 3 bis.

We believe this DR75 and its **alignment with the ISA’s inspection and compliance regime**, needs more consideration. A financial audit, and an inspection of facilities or books, are separate functions, carried out by different types of professionals and generally with different approaches, objectives and methodologies. Whilst the ISA Inspectorate may include forensic economists, and may include within its scope financial monitoring, we have not heard this proposed before or covered in Part XI of the draft Regulations, and it may need further discussion. In the meantime, we consider it would be better to have a distinct records audit requirement in this section of the regulations. This could read: *“The Council or Compliance Committee may request an audit of the Contractor’s records, which shall be undertaken at the Contractor’s sole cost, by an independent auditor approved by and reporting to the Council.”* Access to facilities, equipment, records etc. for physical inspection and compliance assurance purposes can then be left to Part XI. So we suggest these aspects should be removed from this regulation, to avoid duplication.