

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 76

Assessment by the Authority

1. Where the Secretary-General so determines, taking into account the relevant guidance provided by the Council and following any audit under this Part, or by otherwise becoming aware that any royalty return is not accurate and correct in accordance with this Part, the Secretary-General may, by written notice to a Contractor, request any additional information that the Secretary-General considers reasonable in the circumstances, including the report of an auditor.

2. A Contractor shall provide such information requested by the Secretary-General within 60 Days of the date of such request, together with any further information the Contractor requires the Secretary-General to take into consideration.

3. The Secretary-General may, within 60 Days of the expiry of the period prescribed in paragraph 2 above, and after giving due consideration to any information submitted under paragraph 2, make an assessment of any royalty liability that the Secretary-General considers ought to be levied in accordance with this Part.

4. The Secretary-General shall provide the Contractor with written notice of any proposed assessment under paragraph 3 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The Secretary-General shall consider such representations and shall confirm or revise the assessment made under paragraph 3 above.

~~4. bis~~ If the Contractor is not satisfied with the Secretary-General's confirmation or revision of the assessment, the Contractor may request a review of that decision in writing and provide any further information the Contractor wishes the Secretary-General to consider within 30 Days of a decision being made. The Secretary-General shall then ~~reconsider and either~~ affirm, revise, or revoke the assessment, taking into account the further information provided by the Contractor, within 60 Days.

~~4. ter~~ The Secretary-General shall provide the Council with each approving assessment confirmed or revised according to paragraphs 4 and 4bis above. ~~The Secretary General shall provide the Contractor the written notice of the decision of the Council.~~

5. The Contractor shall pay any such royalty liability within 30 Days of the date of the determination made by the Secretary-General under paragraph 4 ~~or, where applicable, paragraph 4bis.~~ ~~In case of appropriate decision of the Council, the Contractor shall pay any such royalty liability within 30 Days of the date of the written notice provided by the Secretary General under paragraph 4ter above.~~

Comment

It has been suggested that paragraph 4ter unnecessarily refers to an unspecified Council decision, the second part of the paragraph is therefore proposed to be removed. A corresponding edit has been proposed to paragraph 5.

We recommend merging the DR 72 request for further information from the Contractor by the SG with this regulation, which seems to be dealing with the same issue – albeit with different deadlines. We wonder if the two can be merged to avoid duplication, but in a way that retains appropriate triggers and timeframes for when the SG can make such a request and the Contractor’s reply.

As a general point and was raised by some member States in July 2024, the SG seems to be the organ solely responsible for dealing with royalties. This includes receiving the royalty return, determining whether more information is needed, determining if there should be a refund, agreeing with the Contractor where their records will be held, assessing whether a royalty return is correct and levying a charge for outstanding amounts - even receiving an appeal to that levy themselves. **The ISA’s subsidiary organs are frequently omitted from procedures in this Part of the Regulations, and nor do the Council or the Assembly seem to be involved as a back-stop** for overseeing this stage. This seems at odds with how other matters are dealt with in the Regulations, and we consider that other ISA organs should be more involved in the management of royalties (such as the Finance Committee, or the Compliance Committee).

For example, in DR76 here, the SG seems to be inappropriately managing royalty issues on his or her own, even to the extent of reviewing his or her own decision under paragraph (4), and then reviewing his own review decision under (4 bis)! We consider it would be sensible and more accountable to have the LTC, or the Finance Committee, or the Compliance Committee or the Council engaged at some points to supervise the SG’s work and/or provide an independent review of decisions. The language proposed for DR77(2)(alt) could be replicated here in DR76 for this purpose. In particular, if the SG finds that the Contractor has been mis-reporting on their royalty return, or audits show poor financial controls or financial wrongdoing, this should be immediately shared with the **Compliance Committee**, not left for correspondence between the SG and the Contractor.

Regarding **paragraph (4bis)**, we understand the intent in introducing a review mechanism, but for the reasons just stated, do not believe that the responsibility to review a decision taken by the Secretary-General should lay solely with the Secretary General.