

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 78

Arm's-length adjustments

1. For the purposes of this Regulation:

- (a) "Arm's length", in relation to Exploitation Contracts and transactions, means contracts and transactions that are entered into freely and independently by parties that are not Related Parties and without one party influencing another; and
- (b) "Arm's-length value", in relation to costs, prices and revenues, means the value that a willing buyer and willing seller, who are not Related Parties, would agree to in a competitive environment.

2. Where, for the purposes of calculating any amounts due under this Part VII, any costs, prices and revenues have not been charged or determined on an arm's-length basis, pursuant to a contract or transaction between a Contractor and a Related Party, the Council may adjust the value of such costs, prices and revenues to reflect an arm's-length value, taking into account the recommendations of the Commission, in accordance with internationally accepted principles.

3. The Secretary-General shall provide the Contractor with written notice of any proposed adjustment under paragraph 2 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. If the Contractor submits written representations, the Secretary-General shall affirm, amend or revoke the adjustment, taking into account the further information provided by the Contractor, within 60 Days of being provided with that further information.

We propose the terms "arm's length" and "arm's length value" and their definitions be moved to the Schedule to provide for drafting consistency.

We note that the **previous paragraph (4)**, proposed by Japan and which set out advisory roles here for both the LTC and the Finance Committee, has been deleted. We do not have a record of any objection to this provision. We recommend it be reinstated. We believe a greater role should be played by other relevant organs of the ISA, in addition to the SG, in reviewing these representations made by Contractors. In addition we would like to see in DR78 clarification of the basis on which the Council would take its decision in paragraph (2). It seems likely that a recommendation from the Council subsidiary bodies would also be needed here.