

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.

**Section 7**

**Review of payment mechanism**

**Regulation 81**

**Review of system of payments**

1. The system of payments adopted under these Regulations and pursuant to paragraph 1(c) of Section 8 of the Annex to the Agreement, shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter **[in accordance with the applicable Standards ~~as well as all observed Environmental Impacts~~]**.
2. The Council, based on the recommendations of the Commission and following a review under paragraph 1, may decide to adjust the existing system of payments or introduce a new system of payments, taking into account the level of maturity and development of Exploitation activities in the Area, as well as the principles under Article 13 of Annex III to the Convention and Section 8 of the Agreement.
3. Without limiting the scope of any review by the Council, a review under this Regulation may include an adjustment to an existing system of payments, or an introduction of a new system of payments, and may consider changes to all applicable rules, regulations and procedures of the Authority [including any applicable Standards and taking into consideration the Guidelines].
4. A review of the system of payments shall consider all resource categories unless otherwise decided by the Council.
5. A change to the system of payment shall only apply by agreement between the Authority and the Contractor for Contract Areas that have already commenced Commercial Production.

**Comment**

A number of delegations proposed the removal of the separate reference, in this context, to “*Environmental Impacts*”. Since paragraph 1 refers to the applicable Standards, the categories of environmental impacts which may be relevant for the purposes of this paragraph may be enumerated in the applicable Standard.

We question whether it would be lawful for a payment system set in the Regulations (which have been approved by the Assembly), to be amended only by the Council. Assuming this is the case, it seems that changes to rates and systems for existing (and possibly future contracts) should apply only after the Assembly makes its decision. For that reason we wonder if **paragraph (2)** should be phrased as the Council making a recommendation (or provisional decision) for the approval of Assembly, rather than as the Council making a decision?

Along these lines, and to guide lawful and accountable decision-making, we had supported language previously included in the draft text regarding objectives by which recommendations for the review and any adjustment of the

system may be made, and the inputs upon which the LTC and Council's recommendation should be based. We do not recall any opposition to those provisions and suggest they are reinstated (e.g. as a **new paragraph (4 bis)**), or at least retained in Standards (via the Suspense Document). For ease of reference, that text is included below:

*"4 bis. In making a recommendation pursuant to paragraph (2), the Commission and the Council shall:*

*(a) take into account the sufficiency of the benefits that are being generated for humankind as a whole in return for the loss of the common heritage of humankind;*

*(b) reflect the objectives contained in Article 13, Annex III of the Convention, including to ensure optimum revenues for the Authority from the proceeds of Commercial Production;*

*(c) follow the process and consider relevant matters as set out in the applicable Standard; and*

*(d) be informed by consultations with relevant recognized independent experts and Stakeholders, and the advice of the Economic Planning Commission and Finance Committee."*

**Paragraph (5)** as drafted could be interpreted to mean that a revised system of payments only applies to Contracts where Commercial Production has started, and only if the Contractor agrees. This is not the policy intention, and this paragraph needs to be more carefully phrased to avoid perverse outcomes. We suggest: *"In the case of a Contractor who has already commenced Commercial Production within a Contract Area at the time of a decision by the Authority to change the system of payments in accordance with this regulation, the revised system of payment shall only apply to such Contract Area by agreement between the Authority and the Contractor".*