September 2025

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 85

Annual fixed fee

1. A Contractor shall pay to the Authority, [Alt 1. from the date of commencement of Commercial Production in a Contract Area] [Alt 2. from the ~~effective date~~date of the signature of an Exploitation Contract and for the term of the Exploitation Contract and any extension thereof] an annual fixed fee. The amount of the fee shall be established by the Council as required under paragraph (1)(d) of Section 8 of the Annex to the Agreement~~.~~ on the advice of the Finance Committee, and with the aim to cover the likely costs associated with the Authority's management of the Exploitation ~~C~~Ccontract, including staffing the Secretariat and conducting inspection and enforcement activities.

2. The annual fixed fee is due and payable to the Authority within 30 Days of the commencement of each Calendar Year.

3. Where the date of [commencement of Commercial Production] [the signature of the Exploitation Contract] occurs part way through a Calendar Year, a prorated annual fixed fee shall become due and payable to the Authority within 30 Days of such commencement date.

3. bis Where an annual fixed fee remains unpaid after the date it becomes due and payable:

(a) ~~This constitutes a violation of the fundamental terms of the contract for the purposes of Regulation 103; and~~

(b) A Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated by adding 5 per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable.

~~[4. In any Calendar Year, the annual fixed fee may be credited against any royalty or other amount payable under Part VII of these Regulations.]~~

Comments

- It has been suggested that paragraph 4 is unnecessary, several delegations urged its deletion.
- Delegations continued to disagree on whether the commencement of commercial production or the date of the signature of the Exploitation Contract should trigger the payment obligations. Delegations may wish to consider ISBA/29/C/CRP.5 further.

We support the amendment to ensure the **fee is payable from the date of Contract execution** (signature). Commercial Production is a moveable date largely outside of the ISA's control, which may not start until some years into the Contract. It is important that the ISA is properly capacitated to fulfil its mandated regulatory functions, and also that the costs of that capacitation are appropriately allocated to the parties who stand most to benefit from it. In that regard, we welcome the Secretariat's paper on annual fees (ISBA/29/C/CRP.5) and strongly agree that the annual fixed fee should commence from signature of Contract and not from the beginning of Commercial Production

If this amendment is made, then the annual reporting fee in DR84 could be deleted, and rolled up into this annual fixed fee instead. We note this is consistent with the Secretariat's paper.

We propose that the deleted **sub-paragraph 3bis (a)** should be replaced with "*the Authority shall follow the process set out in Regulation 103"* so it is clear that there will be repercussions for non-payment. This is the same text as we also propose for DR84.

In relation to **paragraph (4)**, this provision would mean that for each dollar of revenue collected from the annual fixed fee, the royalty payment will be reduced by a dollar, so royalties paid would not increase the ISA's overall revenue collections. That is effectively funding the ISA's regulatory costs out of a pot that would otherwise be distributed for the benefit of humankind, and particularly developing countries. If the purpose of this fee is to cover ISA costs, it would be more sensible not to credit it against the royalty. We would therefore support deleting paragraph (4).