

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 95

Issu~~ance~~ee of Guidelines

1. The Commission ~~[or other subsidiary organs of the Authority]~~, shall, from time to time, [where appropriate or upon request by the Council,] develop Guidelines of a technical nature, in order to assist in the implementation of these Regulations, taking into account the views of Stakeholders.

1. bis The Secretary-General shall, from time to time, develop Guidelines of an administrative nature, in order to assist in the implementation of these Regulations, taking into account instructions from the Council and the views of the Commission as well as other Stakeholders.

2. The full text of ~~[such]~~ Guidelines [or any revisions thereto] shall be reported to the Council ~~[immediately]~~. Should the Council find that a Guideline is inconsistent with the intent and purpose of the rules, regulations and procedures of the Authority, it may direct that the Guideline be modified. ~~[by the Commission] [or withdrawn]~~.

3. The Commission or other subsidiary organ, in the case of technical Guidelines, and the Secretary-General, in the case of administrative Guidelines shall keep under review such Guidelines which shall be reconsidered, and revised subject to Council approval as needed, at least every five years from the date of their adoption or revision, and in the light of improved knowledge or information.

~~[4. [Notwithstanding the non-binding and recommendatory nature of Guidelines, Contractors are expected to observe all Guidelines issued by the Authority to the furthest extent possible. The Council may request Contractors to explain any divergence from the Guidelines.] [Guidelines are only of a recommendatory nature, yet Contractors shall ensure they are apprised of the Guidelines and take them into account in their performance of functions under these regulations and their contract. The observance of a Guideline by a Contractor may serve as supporting evidence of compliance by that Contractor with the relevant Rules of the Authority to which the Guideline relates. The Authority may also request applicants or Contractors to identify and explain departures from Guidelines].~~

The role of Stakeholder inputs to the development or modification of Guidelines needs to be specified in this regulation. While paragraph (1) refers to ‘the views of Stakeholders’, it does not speak to how Stakeholders should be consulted (or even require this), nor explain when, or who should carry out the consultation. It is a duty with no one to carry it forward, and no accountability for its observation. This applies to DR94 as well. We reiterate that these broader consultation procedures cannot be deferred until a later date or another instrument, as they are vital to understand how the Regulations will operate.

We support paragraph (4) and a general requirement for Contractors to apprise themselves of Guidelines in their conduct. We consider that the ISA should use Guidelines as a means of compliance assurance, so that adherence to a Guideline, while not mandatory, provides a measure of comfort that the relevant outcome will meet ISA rules.