

## 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 22****Use of Exploitation Contract as security**

1. The Contractor may, [solely for the purpose of raising financing to effect its obligations under an **E**xploitation **C**ontract and only with the prior consent of the Sponsoring State or States and of the Council [which consent shall not be unreasonably withheld or delayed], based on the recommendations of the Commission], mortgage, pledge, lien, charge or otherwise encumber all or part of its interest under an Exploitation Contract.
2. The Contractor shall, when seeking the consent of the Council, and in its annual reports submitted in accordance with Regulation 38, disclose to the Council and Commission the terms and conditions of any such encumbrance referred to in paragraph 1 above and its potential impact on the activities under the Exploitation Contract in the event of any default by the Contractor.
3. As a condition to giving consent under this Regulation, the Authority shall request evidence that the beneficiary of any encumbrance referred to in paragraph 1 above [~~shall agree~~] [**agrees**] either, upon foreclosure, to undertake Exploitation activities in accordance with the requirements of the Exploitation Contract and these Regulations, in which case the beneficiary must fulfil the requirement of paragraphs 4 and 5 of Regulation 23 or that such a beneficiary shall transfer the mortgaged property only to a Transferee that fulfils the requirements of paragraphs 4 and 5 of Regulation 23 as determined by the Commission.
4. The Council may require that the beneficiary of the encumbrance referred to in paragraph 1 above:
  - (a) Shall subscribe to any internationally adopted standards for the extractive industries which are widely accepted including environmental and social governance standards, with reference to relevant Standards and Guidelines where relevant; or and
  - (b) Shall be properly regulated through a national financial conduct authority in accordance with the Guidelines.]
5. A Contractor shall file with the Seabed Mining Register a summary of any agreement that results or may result in a transfer or assignment of an Exploitation Contract, part of an Exploitation Contract or any interest in an Exploitation Contract, including registration of any security, guarantee, mortgage, pledge, lien, charge or other encumbrance over all or part of an **E**xploitation **C**ontract. Nothing in this Regulation shall relieve a Contractor of any obligation or liability under its Exploitation Contract.

6. The Authority shall ~~[not]~~ ~~[not be obliged to]~~ provide any funds or issue any guarantees or otherwise become liable directly or indirectly in the financing of the Contractor's obligations under an ~~E~~exploitation ~~C~~ontract.

**Comments**

- In the Consolidated Text it was suggested to delete the bracketed text in paragraphs 1 and 4 in its entirety. It was suggested by many delegations to reinstate those elements, which has been done.
- In paragraph 6, it has been suggested by several delegations to insert direct language that makes clear that the Authority "*shall not*" provide any funds or guarantees in respect of contract financing. It has thus been updated.

We support the edits and reinstatements made in this version of DR22. In particular:

- We find the wording in **paragraph (1)** relevant to prevent an ISA Contract being used to raise funds that are then put towards another project, leaving the Contractor too thinly capitalised to deliver on its Exploitation Contract, and undermining the ISA's previous assessment of the Contractor's financial capabilities to deliver on its Plan of Work. We also agree that mortgaging etc. should only be done with the prior consent of the Council.
- We consider **paragraph (4)** helpful, as it gives the Council discretion to consider the type of lender involved in the project. This can ensure any loan or guarantee is backed by international standards pertaining to environmental, social, and governance matters, which will add a helpful extra layer of scrutiny and regulation to the ISA's own, via the financial institution.

For paragraph (5), a summary of the relevant agreement is insufficient and not typical of how records of security interests operate – the full transfer or mortgage agreement should be filed and be of public record (as is the case for aircraft security agreements, or land mortgages, for example). Certain proprietary commercial terms can be scheduled and kept confidential. To that end, in paragraph (5) instead of "summary" we proposed "true, complete, and correct copy."