

## 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 23****Transfer of rights and obligations under an Exploitation Contract**

1. A Contractor may transfer its rights and obligations under an Exploitation Contract in whole or in part only with the prior written consent of the [Sponsoring State, and the Council [such consent not to be unreasonably withheld], based on the recommendations of the Commission [and with notification to the Sponsoring State].
2. The Contractor and Transferee shall jointly inform the Secretary-General of any application to transfer the rights and obligations under an Exploitation Contract. The Secretary-General shall transmit that application to the Commission, which shall give its recommendation to the Council.
3. The Commission shall consider and [decide whether to] recommend to the Council ~~to that the Council~~ consent to the application for consent to transfer [within 90 Days of the date it receives the application] [at its next available meeting, provided that the documentation has been circulated at least 30 Days prior to that meeting].
- [4. An application to transfer the rights and obligations under an Exploitation Contract shall be subject to the requirements under Regulations 5-16].
4. bis If at the time of the transfer a Material Change arises this should be addressed in accordance with Regulation 57.
5. The Commission shall not recommend approval of the transfer if it would:
  - (a) Involve conferring on the Transferee a Plan of Work, the approval of which would be forbidden by Article 6 (3) (c) of Annex III to the Convention; or
  - [(b) Allow the Transferee to Monopolize the conduct of activities in the Area [with regard to the Resource category covered by the Exploitation Contract or to Monopolize or significantly control the production of any single Mineral or metal produced globally; or]]
  - (c) If any circumstances under Regulations 15(2) or (3) are applicable.
6. Where the Exploitation Contract is subject to an encumbrance registered in the Seabed Mining Register, the Commission shall not recommend consent to the transfer unless it has received evidence of consent to the transfer from the beneficiary of the encumbrance.
 

[6. bis A Contractor shall pay The Authority shall levy a Transfer Profit Share, which shall be levied on a pro-rata basis by the Authority on any gain gains realised from the direct or indirect transfer of rights under an Exploitation Contract.]

[6. ter e The effective operation of the Transfer Profit Share referenced in the above paragraph shall follow the provisions included in the applicable Standard The Authority shall publish a Standard for the effective operation of the Transfer Profit Share.]

7. Where the Commission determines that the requirements of paragraphs 4, 5, ~~and 6~~ ~~and 7 of this Regulation~~ above have been fulfilled, it shall recommend approval of the application for consent to the Council. In accordance with Article 20 of Annex III to the Convention, the Council shall not withhold consent to a transfer if the requirements of this Regulation are complied with. Once the Council has received a recommendation from the Commission, the Council ~~will~~ shall inform the Contractor of the Council's decision within 30 Days.

8. A transfer is validly effected only upon:

- (a) Execution of the assignment and novation agreement between the Authority, the transferor and the Transferee;
- (b) Payment of the prescribed transfer fee pursuant to appendix II; and
- (c) Recording by the Secretary-General of the transfer in the Seabed Mining Register.

~~[(d) Payment of the Transfer Profit Share in accordance with paragraph 6bis7 of this Regulation and the applicable Standard.]~~

9. The assignment and novation agreement shall be signed on behalf of the Authority by the Secretary-General or by a duly authorized representative, and on behalf of the transferor and the Transferee by their duly authorized representatives.

10. The Exploration Regulations on Transfer of Rights and Obligations are hereby amended as set out in the provisions of this Regulation and all applicable Standards and relevant Guidelines. These amendments supersede and replace the relevant Exploration Regulations on Transfer of Rights and Obligations. In the event of any inconsistency between the two sets of Regulations and applicable Standards, the Exploitation Regulations above shall prevail.

We do not see reflected in this text the discussion that took place in March 2024 between, inter alia, Russia, United Kingdom, India and Jamaica on **paragraph (1)**, including whether it is necessary to include the paragraph at all, as UNCLOS and the rest of the DR23 adequately covers the need for consent by the Council, as well as the need for continued sponsorship). The sponsorship aspect could alternatively be covered by a provision like the one included in DR24 (below), which requires the SG to confirm with the Sponsoring State that its sponsorship continues.

It is important to retain **paragraph (4)**, but this iteration does not capture aspects of the previous paragraph (4) that relate to occurrences after a contract award that should be essential **pre-requisites to a transfer**, such as: lodgement of an Environmental Performance Guarantee, and submission of relevant information to the Beneficial Ownership Registry. These items should be added either in paragraph (4) or in paragraph (8).

We wonder if **paragraph (5)** is necessary? The parameters for an LTC recommendation should be covered adequately by DRs 5-16. If paragraph (5) is retained, we recommend adding a new sub-paragraph (d): *'if the criteria contained in DR13 are not met'*, to ensure a transfer does not allow for a Contract-holder who would not have been approved had they applied for the original Contract.

Like the African Group, Australia, Canada, Chile, Germany, United Kingdom and others, we support **paragraphs (6 bis) and (6 ter)** on a **transfer tax** but recommend drafting improvements (as follows):

[6. bis In accordance with the applicable Standard, ~~t~~The Authority shall levy, and the Contractor shall pay, a Transfer Profit Share, on any gain realised from the direct or indirect transfer of rights under an Exploitation Contract.]

[6. ter ~~e~~ The effective operation of the Transfer Profit Share referenced in the above paragraph shall follow the provisions included in the applicable Standard.]

We presume the applicable Standard would define how 'gain' will be interpreted and calculated? Otherwise this also needs to be addressed in the Regulations. It is unfortunate that for the second time, the draft Standard and Guideline submitted by Canada does not appear to be included in the Suspension Document.

DR23 paragraph (7) describes the process if a transfer is recommended by the LTC and approved by the Council. We wonder if a **30-day turnaround time for a decision of the Council** is realistic here. Paragraph (7) does not, however, cover the converse process for **if a transfer is not recommended or approved**. We would suggest new provisions to cover this, e.g.:

*“7 bis In the event an applicant for the transfer of an exploitation contract fails to demonstrate to the satisfaction of the Commission that the requirements of paragraphs 4, 5, 6 and 7 have been fulfilled, the Commission shall recommend not to approve such transfer.”*

*“7 ter In the event the Council does not approve a transfer in accordance with this Regulation, but the transfer purports to take place, the transfer shall not be valid, and the related Exploitation Contract shall terminate automatically.”*

**Paragraph (8)** speaks the ‘**the assignment and novation agreement**’. We agree such an instrument is required to pass the rights and obligations of the pre-existing Contract to the transferee. We wonder whether the Council, on the recommendation of the LTC, may also wish to add new terms to the Contract at this point of transfer? If so, we think this regulation needs some new wording to fill the process gap between Council decision and SG issue of the assignment and novation agreement, enabling Council to require requisite terms in the assignment and novation agreement.

We support **paragraph (10)** and the intention to **harmonise the Exploration Regulations** and the Exploitation Regulations. But we are not sure this drafting quite works, as (a) DR23 expressly refers to an ‘Exploitation Contract’ and (b) DRs6-15 would not apply to an Exploration Contract. This should be solvable by drafting amendments. We suggest a new DR108 to describe consequential amendments to the Exploration Regulations.