

“From Paper to Practice”

ISA functions to oversee exploitation

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The Commonwealth

Overview

1. UNCLOS on ISA functions
2. Other extractive regulators
3. Principles of best regulatory practice
4. Special ISA characteristics

- The ISA is the organisation through which States Parties shall, in accordance with this Part, organize and **control** activities in the Area, particularly with a view to administering the resources of the Area on behalf of mankind as a whole.
- The ISA shall exercise such **control** over activities in the Area as is necessary for the purpose of securing compliance [with UNCLOS, the rules, regulations and procedures of the ISA, and approved plans of work]

[UNCLOS Articles 153 and 157]

- Exploration and exploitation shall be carried out only in areas specified in plans of work approved by the ISA, and every approved plan of work shall provide for **control** by the ISA of activities in the Area

[UNCLOS Annex III]

- The ISA shall have such powers as are implicit and necessary
[UNCLOS Article 157]
- The ISA has right to exercise functions of control and regulation
[UNCLOS Article 153]
- This includes:
 - approval of plans of work,
 - issue of contracts,
 - inspecting installations used for activities in the Area.
[UNCLOS Article 153 and Annex III, Article 3]
- ISA has powers in certain circumstances to:
 - issue warnings to contractors,
 - impose monetary penalties on contractors,
 - issue (environmental) emergency orders to adjust or suspend operations,
 - suspend a contract,
 - terminate a contract.
[UNCLOS Annex III, Article 18]

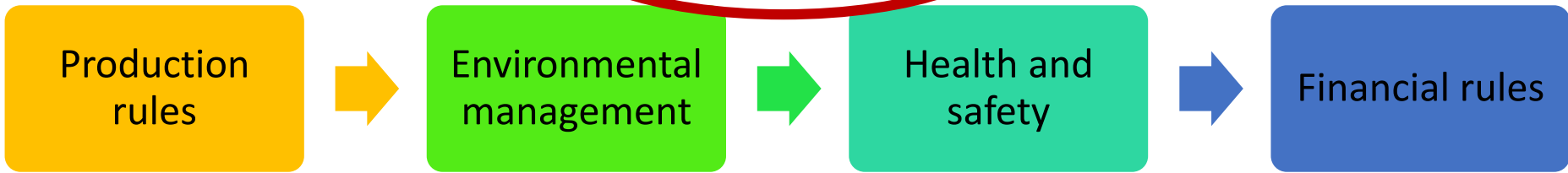


Annex III, Article 17: ISA shall adopt and uniformly apply rules and procedures for the exercise of its functions including:

- (i) size of area
- (ii) duration of operations;
- (iii) performance requirements;
- (iv) categories of resources;
- (v) renunciation of areas;
- (vi) progress reports;
- (vii) submission of data;
- (viii) inspection and supervision of operations;
- (ix) prevention of interference with other activities in the marine environment;
- (x) transfer of rights and obligations by a contractor;
- (xi) procedures for transfer of technology to developing States and for their direct participation;
- (xii) mining standards and practices, including those relating to operational safety, conservation of the resources and the protection of the marine environment;
- (xiii) definition of commercial production;
- (xiv) qualification standards for applicants.

Other extractive regulators

Policy, strategy, planning	Development of technical specifications	Issue and review of rules
Cadastre and mapping	Data collection, analysis, management	Receiving applications, and contractor reports
Due diligence	Public consultation	Approvals
Environmental permit	Contract negotiation and issue	Technical review of applications and reports
Contract management	Performance monitoring	On-site inspectorate
Production and technical audits	Enforcement	Measurement and valuation of minerals
Mine closure	Revenue collection and administration	Revenue management
Financial audits	Dispute resolution	Coordination with other relevant authorities



State membership organisation

Common heritage of mankind

Interaction with state sponsorship,
flag state, high seas regimes



‘Good regulation’

- Many examples of poor regulation leading to poor economic, environmental, or social outcomes.
- *“Good regulation helps to make countries healthier, happier, cleaner, more prosperous and safer, while supporting innovative solutions to the challenges faced, and thereby serves the interests of all citizens” [OECD].*
- What does ‘good regulation’ look like?



The Commonwealth 5 principles of best regulatory practice

Transparent (includes clarity on policy and rules, avoiding uncertainty, explaining decisions, enabling informed involvement of stakeholders, openness to public scrutiny)

Targeted (includes timeliness, practicality, mobilising resources, the regulatory authority having relevant powers, avoiding a scatter gun approach, regular review of regulatory practices)

Proportionate (includes efficiency, a risk-based approach: intervention only where necessary and remedies appropriate to the risk, collaboration with other regulatory actors, practicality and affordability)

Accountable (includes clarity on roles, responsibilities and decision making processes, operating to clear objectives, basing decisions on sound data and justification, enforceability, higher authority oversight, accessible appeals process)

Consistent (includes predictability, impartiality and equity in application, regulation founded on coherent and long-term focussed policy, joined-up working between divisions / other regulators)



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