

## Guidance for Chapter 2.6 Planning and Financing Reclamation and Closure

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This guidance document provides information to assist in the interpretation of chapter 2.6 of IRMA Standard 1.0 (2018 version), organized in the following sections:

- Background on Revision
- Challenges
- Temporary Approach until IRMA Standard 2.0
- Interpretive Guidance

### BACKGROUND ON REVISION

The IRMA Secretariat recognizes that providing for adequate reclamation and closure through meaningful plans and reliable funding is crucial to protecting the environment and communities from one of the most enduring negative impacts caused by mining activities.

IRMA's Chapter 2.6 on Planning and Financing Reclamation and Closure includes requirements related to reclamation and closure planning, as well as the provision of financial surety instruments to ensure that funds will be in place to cover the cost of planned reclamation and closure (and post-closure) activities.

The purpose of requiring mines to provide financial surety instruments is to ensure that funds will be available for the government or other designated entity to execute (or oversee a third-party to undertake that work) the planned reclamation/rehabilitation and closure activities if the mining company is unable or unwilling to do so.

There are a variety of financial surety mechanisms commonly recognized for this purpose, ranging from the most secure and liquid, such as cash deposits, certificates of deposits, and trust or reclamation funds, to mechanisms such as self-bonding that are less reliable and potentially more difficult to access when needed.

Current best practice for financial surety prohibits self-bonding or corporate guarantees; in fact, these mechanisms are banned for mining projects in various jurisdictions around the world. Consequently, 2.6.4.3 of the IRMA Standard prohibits self-bonding and corporate guarantees as well.

### CHALLENGES

In initial IRMA audits conducted at mines, the IRMA Standard's financial surety requirements have proven impossible to meet in some jurisdictions. For instance, if there is not a formal government-mandated program for collecting and managing closure funds and overseeing closure in the event of default by the mine, then there is no effective body to act as the beneficiary or receiver. Likewise, insurance companies can be reluctant to insure closure in countries lacking legislation or a stable economy/currency. This can significantly restrict the options for mines in these countries, effectively eliminating access to more reliable and liquid surety instruments.

This means that mines that participate in the IRMA third-party assurance process in jurisdictions that lack adequate government oversight for mine closure funding and

## IRMA GUIDANCE NOTE ON CHAPTER 2.6 (NOVEMBER 2022)

execution will not be able to meet the critical requirement as written. These sites are unable to be recognized with an IRMA achievement level other than IRMA transparency. This is because a site must substantially or fully meet all critical requirements in order to qualify for these higher achievement levels.

This topic has been the recent focus of an expert working group, and the IRMA Secretariat is working to identify an improved set of criteria that we believe will provide equivalent financial assurance (e.g., not lessening our intent) regardless of geopolitical impediments. We anticipate incorporating new language into the upcoming standard revision. In the meantime, we do not want to penalize or deter mines operating in countries with insufficient government oversight or weak economies.

A common question asked during deliberations of this issue is whether we should apply the current requirements where they can be implemented and provide an exception only for mines operating in countries where the requirement is not feasible to meet. The IRMA Secretariat remains committed to a globally relevant standard that provides the same performance expectations regardless of jurisdiction. As we have done in prior instances where our early implementation of the standard has identified flaws, we will review this requirement with continued rigor to ensure that our next version provides a suitable solution to the essential need for adequate, reliable, and liquid assurance mechanisms.

IRMA strongly recommends that in jurisdictions where surety instruments can be used (e.g., there is a reliable government entity that acts as a reliable beneficiary and executor for mine reclamation and closure), sites should aim to meet this standard of care, particularly since future revisions to the IRMA standard are expected to reinstate best practice for financial assurance, including liquid surety instruments. The temporary modifications presented in this guidance are not intended to permanently lower the intent of the best practices provided in the 2018 version of the standard.

### TEMPORARY APPROACH UNTIL IRMA STANDARD 2.0

IRMA is providing below specific language changes to 2.6.4.1 and the glossary. Where IRMA has changed the language, the change is presented in red italics. IRMA is also providing guidance on the interpretation of other requirements where references to “surety” or “financial surety” require guidance for consistent interpretation.

The IRMA Assurance Committee approved that 2.6.4.1 will be retained as a critical requirement; however, the language of the requirement will change slightly, as noted below:

- 2.6.4.1
  - Existing Language: Financial surety instruments shall be in place for mine closure and post-closure.
  - Modified Language: *Financial assurance* shall be in place for mine closure and post-closure.

In this alternative IRMA preserves the expectation that financial assurance is in place, and it remains a critical requirement. Auditors are expected to weigh the adequacy, reliability, and credibility of independent verification of any financial assurance mechanisms used. The burden of proof is on the site to demonstrate that the financial assurance mechanism(s) for the site provide a high degree of confidence that the costs of reclamation, closure, and post

## IRMA GUIDANCE NOTE ON CHAPTER 2.6 (NOVEMBER 2022)

closure can be recovered when needed. This should include details on how these mechanisms will work in the event of default, abandonment, bankruptcy, early closure, or in the event of a sale. The degree to which the mechanisms are reliable in a variety of possible scenarios will assist auditors in determining the degree of conformity.

The requirements in 2.6.4.2 and 2.6.4.3 will remain in the Standard as they reflect best practice, but they will not be assessed or scored until this requirement is updated in the next revision of the Standard.

### INTERPRETIVE GUIDANCE

The IRMA standard has other requirements that reference financial surety with respect to reclamation, closure, and post closure. IRMA provides the following interpretive guidance on to facilitate the interpretation of a site's performance given these changes.

Where broadening the requirement for financial surety to include financial assurance would weaken the requirement, the use of "financial surety" in the requirement language has not been modified. This includes the following requirement:

- 2.6.7.1 includes is a two-part requirement. The first is for sufficient financial surety for all long-term activities, and the second is for guaranteed financial assurance regardless of the operating company's finances at the time of closure or bankruptcy. Because the requirement for financial surety is more protective, this requirement shall be interpreted as written, with the first half requiring financial surety specifically. Sites that do not have formal financial surety instruments as defined in 2.6.4.2 will not fully meet this requirement.

The following requirements merit interpretation to avoid creating a potential loophole for sites relying on other forms of financial assurance. In these cases, the modified interpretation broadens the requirement as written so that requirements specifically referring to financial surety are also applicable to any other financial assurance mechanisms used by the operating company. These modifications include:

- 2.6.2.3.j requires a multi-year inflation increase in the financial surety or an annual review and update of the financial surety. Sites that use financial assurance mechanisms such as letter of credit or corporate guarantee will be expected to similarly have an annual review and update of their financial assurance mechanism to demonstrate full conformity.
- 2.6.2.5.b requires the operating company provide an opportunity for stakeholder input on the adequacy of completed reclamation before releasing financial surety. This shall be applied similarly to other formal means of releasing financial assurance used to guarantee reclamation.
- 2.6.4.4 requires that the results of approved financial surety reviews be made available to stakeholders. This shall be applied similarly to other formal means of financial assurance used to guarantee reclamation, closure and post-closure costs.
- 2.6.4.5 requires public notice for changes to financial surety. This requirement shall be applied similarly to any formal means of financial assurance used to guarantee reclamation, closure, and post-closure costs.

## IRMA GUIDANCE NOTE ON CHAPTER 2.6 (NOVEMBER 2022)

- 2.6.4.6 requires that the terms of the financial surety guarantee to that the surety is not released until all closure activities are complete, effective, and stable, and public comment on the release has occurred. This shall similarly apply to reductions or release of any formal financial assurance mechanism used.
- 2.6.7.2 addresses post closure funding for water treatment and refers to both financial surety and funding. This requirement shall apply similarly to include any forms of financial assurance used by the operating company.
- 2.6.7.3 requires that independent analysis of reclamation and post-closure financial surety be conducted at the same time. This requirement for simultaneous independent analysis shall similarly apply to other forms of financial assurance for reclamation and post-closure.
- 2.6.7.4 describes conservative assumptions for the calculation of Net Present Value for financial surety. This shall similarly apply to other forms of financial assurance.

Notes on related requirements in other chapters

- 1.1.1.1. requires legal compliance with host country laws. As is true throughout the IRMA Standard, IRMA requirements do not supersede legal requirements where legal requirements are more protective. Therefore, the IRMA Standard does not provide for operating companies to meet a standard of financial assurance lower than applicable legal requirements.

The current glossary definition of **financial surety** remains applicable.

IRMA is *adding* a definition of **financial assurance** to support the interpretations offered in this guidance document.

- **Financial Assurance** refers to adequate financial capacity to cover estimated costs of planned closure, early closure, reclamation, and post-closure commitments. For the purpose of the IRMA Standard, demonstrated capacity can include any form or multiple forms of cash deposits, surety bond, performance bond, trust or escrow fund, certificate of deposit, insurance policy, or other financial mechanism(s) such as independently verified corporate or self-guarantee or independently verified letter of credit.

The current definition of **post-closure** assumes conditions specific to financial surety instruments. Therefore, the definition of post closure will be modified as follows:

- The period after the reclamation surety holder *or other party responsible for oversight* declares the activities required by the reclamation and closure plan are complete; any significant objections raised during the public comment period on the final release of the financial *surety assurance mechanism(s)* have been resolved; and the reclamation surety has been returned to the operator (*as applicable*), or it has been converted to a post-closure trust fund or equivalent (i.e., if there is a need to fund long-term management and monitoring of the site). This phase continues until final sign-off and relinquishment can be obtained from the regulator and stakeholders.