

## Memo of Decision

**To** IRMA Board

**CC** IRMA Secretariat

**From** Michelle Smith, IRMA Director of Standards and Assurance

**Date** May 23, 2023

**Subject** Financial Assurance and Reporting Revisions

The IRMA Board Assurance Subcommittee was convened on May 15, 2023 to review time-sensitive considerations related to the current IRMA standard requirements for reclamation and closure financial assurance in Chapter 2.6. Attendees included committee members Jon Samuel, Jennifer Krill, Glen Mpufane, Alan Young, and Jim Worthington; and IRMA Secretariat representatives Aimee Boulanger and Michelle Smith.

The committee was asked to review two urgent needs: 1) a revision to the October 2022 financial assurance decision that modified the critical requirement for financial surety in countries where there is not an option for government-supported financial surety for reclamation and closure; and 2) priority revisions to the IRMA assurance reporting process. The slide deck from this meeting is attached.

These decisions were approved by unanimous vote by the assurance committee. These decisions were also presented to the board and approved unanimously on May 18, 2023. Board members present and voting included Ashley Hamilton Claxton, Grace Barrasso, JJ Messner de Latour, Jamie Bonham, Jim Wormington, Jon Samuel, Meg Gingrich, and Pavel Sulyandziga.

### Decision Highlights:

#### DECISION #1: Regarding financial assurance critical requirement

- Until further notice (likely after revision of IRMA Standard, unless Assurance Committee revises this current decision), auditors will not score the critical requirement (2.6.4.1, and explanatory 2.6.4.2 and 2.6.4.3) in countries without state-hosted financial surety. Auditors will be required to document why it cannot be applied in the site's country.
- Auditors will review and score the other requirements in the chapter that pertain to financial surety, even if those can't be met because of the absence of state-hosted financial surety.
- Auditors will daylight in the audit report the lack of state-hosted financial surety and the risk presented by the lack of an independently managed reclamation and closure bonding process, noting that while this isn't the company's fault, it is still a risk to the environment and impacted communities.
- Mining companies are encouraged to share with auditors how they are dealing with the issue in the absence of state-hosted system: mining companies can present what the site has in place relative to alternative means of financial assurance or other partial means of surety for reclamation and closure; however, the report will clarify whether auditors have vetted/approved that content or if it has been reviewed by independent financial auditors.

- The committee shares a commitment to this as a temporary fix and will invite comment on this chapter during the IRMA mining standard revision process this year.

#### DECISION #2: Timing of IRMA's review of audit reports

- IRMA will update assurance procedures to clarify that IRMA will receive draft audit reports at the same time as the audited site.
- IRMA will include a description of the nature of IRMA's review in procedural documents.
- IRMA will perform its review of draft public reports promptly to inform the company's decisions on use of the optional corrective action period.
- IRMA will retain documentation of drafts and comments from all parties for the files. These are not intended to be published but could be summarized or produced (in accordance with confidentiality agreements) in the event of a formal complaint regarding bias or influence on the reporting process.

These changes will be effective immediately.

### **Additional background and implementation of these changes**

#### **Financial Surety as a Critical Requirement**

IRMA Secretariat continues to recognize 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 less reliable and potentially more difficult to access mechanisms such as self-bonding.

Current recognized best-practice for financial surety prohibits self-bonding or corporate guarantees and in fact it is banned in several mining jurisdictions around the world. Consequently, 2.6.4.3 of the IRMA Standard prohibits self-bonding and corporate guarantees as well.

#### Terminology

For reference, financial assurance commonly refers to a broad range of mechanisms used to demonstrate that funding necessary to meet the cost of closure, post closure maintenance and monitoring, and corrective action will be available when they are needed. This can include a performance bond, escrow, trust, cash, certificate of deposit, irrevocable letter of credit, corporate guarantee, or other equivalent security, or any combination thereof. A financial surety instrument is a subset of financial assurance and implies that a designated person or party (government or other receiver/beneficiary) receives funds and takes responsibility for the debt, default, or other financial responsibilities of another party if they do not fulfil their obligations.

### Assessment Feedback

Initial IRMA audits conducted at mines have revealed that 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 the more reliable and liquid surety instruments.

Mines that participate in the IRMA third-party assurance process in jurisdictions that lack adequate government oversight for mine closure funding and execution will not be able to meet the critical requirement as written, simply because of a shortcoming in their government framework. 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 to qualify for these 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 especially where more responsible minerals development has the potential to positively contribute to growth of a robust government and economy.

In October 2022, the IRMA assurance committee approved a pathway that would modify the language of the critical requirement, replacing the requirement for "financial surety" with the broader term of "financial assurance" which allowed sites to provide evidence of financial strength as a means of meeting the critical requirement. Following this approval, IRMA developed guidance documents and implementation tools to be tested by the sites in these challenging jurisdictions. IRMA worked with the financial audit firm, KPMG, to develop tools that were consistent with existing practices and appropriate to be assessed by independent financial auditors. Despite these best efforts, IRMA received feedback that this approach was difficult to execute, did not align with the intent of Chapter 2.6, and did not provide meaningful assurance that a site could meet their closure obligations at the end of mine life. Furthermore, the challenges in executing this modified approach resulted in prolonged reporting delays for some sites.

### Implementation of the May 2023 decision

Critical requirement 2.6.4.1 and associated explanatory requirements 2.6.4.2 and 2.6.4.3 will not be scored for sites where there is not possible path in their country for obtaining financial surety instruments for mine reclamation and closure. These requirements will also be removed from the calculation of possible points to properly adjust the chapter score. For clarification, although this relates to a critical requirement of the standard, this is not a revision to the standard but rather a revision to the assurance process.

All other requirements will be scored. Requirements that presume financial surety instruments are in place will be applicable even if a site cannot obtain a financial surety instrument unless it is not relevant for other reasons. Sites where financial surety is not supported by government oversight, and where sites do not have financial surety, will likely not meet certain requirements.

These changes will be reflected in the next version of the manual but will be effective immediately and will be applicable for audits currently underway. This change will also be announced via the IRMA monthly newsletter, and website update notices.

### **Changes to the Assurance reporting process**

Eleven sites have now initiated IRMA audits, and these sites are in various stages of the assurance and reporting process. This has provided an opportunity to learn from the initial IRMA assurance processes, including the user experience of audited sites, IRMA, and audit firms in the reporting process.

#### Current written IRMA process for initial draft audit report

- Within 30 days following the on-site audit closing meeting, the auditors draft a report, the report is reviewed internally by the Certification Body (CB), and then sent to the site.
- The site has 30 days to point out “errors of fact.”
- The site prepares a corrective action plan if required (the extent of requirements subject to a corrective action plan is based on achievement level)
- Site decides whether to postpone final certification decision and publishing of report up to 12 months to implement and allow for verification of early corrective action.
- If a site chooses not to use the optional early corrective action period, then the remaining process is as follows:
  - Site returns comments to CB.
  - CB has 15 days to revise draft, finalize scores, and make certification decision.
  - IRMA has 15 days to review the audit report and return comments to the CB.
  - IRMA returns the report to CB, and the CB has 7 days to finalize the report before publication.
- If the site chooses to use the optional early corrective action period, then the remaining process is as follows:
  - Site takes up to 12 months to make improvements and be re-assessed by the CB (the 12-month period begins the day the site receives the draft report, and the new certification decision must be made, and final report must be published, before the 12 months are up).
  - If the site fails to have changes verified during the 12 months the original draft report is considered the final report, which goes to IRMA for review.
  - If the site undergoes a verification review by the CB, the draft report is revised and then the review process follows the steps above.

#### Actual Practice

- Every site except for one has opted to use early corrective action, preparing corrective action plans, implementing corrections, and have a re-assessment performed by the CB. Sites craft a corrective action plan and implement actions to improve performance (especially critical requirements) based on the CB’s draft report, without IRMA review.
- IRMA sees draft report for the first time only after early corrective actions are complete and verified.
- IRMA’s review includes whether the auditors’ rationale is relevant to the requirement, addresses all parts of the requirement, and aligns with IRMA’s interpretive guidance and definitions of ratings.

- After IRMA's review, CB's may alter their rationale and rating. Sites have elected in some cases to implement additional corrective actions to improve performance given new assessment information.

This process has delayed the publication of reports and created frustration for sites who have acted on a draft set of conclusions. Additionally, IRMA has received inquiries regarding whether IRMA's review threatens the impartiality of the report.

#### Industry best practice

As a result of this early experience with IRMA audits, IRMA reviewed how other standards manage the reporting process to determine what best practices could further inform our process update. IRMA compared audit report review processes across mining/minerals standards (Responsible Steel, RMI, RJC, TSM, ASI, Copper Mark) and other recognized and global voluntary standards (FSC, MSC, ASC, RSPO, Rainforest Alliance). Based on this review, best practice includes the following:

- Scheme Owner Review
  - Draft reports are reviewed by or on behalf of the scheme owner before going to the site. (RMI)
  - Scheme owner review has two complementary objectives: procedural compliance (confirm that the audit process was properly executed, the auditors were competent, and that no conflict of interest existed) and credible reporting (supporting evidence and rationale supports conformity classifications, certification decision is conclusive, and sufficient detail is provided to support decision). (Responsible Steel, RMI, ASI, Copper Mark, ASC, MSC)
- Formal Documentation of Review
  - Scheme owner documents the outcomes of the review process including review timing, reviewers, a summary of the nature of comments, outcome of the review, and any disputes/objections. This is sometimes published alongside the report. (Responsible Steel, Copper Mark, MSC)

#### Implementation of the May 2023 decision

IRMA will update the assurance procedure manual (currently under revision) to include the following changes:

- With the change of timing for IRMA's review, draft public reports will now be sent to IRMA simultaneously with submission to the site. CBs will receive comments from both IRMA and the site, and if these comments change rationale or ratings, the CB will provide the site with updates on which to base decisions related to early corrective action.
- IRMA will update the manual with a description of the nature of IRMA's review, for transparency.
- CBs will provide copies of draft public audit reports sent to sites and comments received from sites to IRMA for recordkeeping. This information will be retained by IRMA along with comments provided by IRMA. If a formal complaint is received related to the independence of the audit, these documents, or a summary, will be made available. Any such responses will be prepared in coordination with the CB and the audited site, as appropriate.

These changes will be reflected in the next version of the manual but will be effective immediately and will be applicable for audits currently underway.



IRMA

Initiative for Responsible  
Mining Assurance

## Meeting Presentation

# IRMA Audit Reporting Improvements, Financial Assurance

For Consideration by the IRMA Assurance  
Committee

May 2023

# Meeting Agenda

## **Today's agenda priorities**

- Financial assurance (revise decision)
- Reporting revisions (Focus on priorities)



**IRMA**

Financial Assurance

# Financial Assurance

## October 2022 Committee Decision

- Financial surety (liquid forms of financial coverage) is recognized as best practice
- Some countries do not have required govt systems to accommodate financial surety for mines
- Given choice of not scoring the critical requirement or asking for alternative forms including corporate guarantee, committee chose alternative forms
- Financial auditor opinion required

## What changed?

IRMA provided general guidance to sites and CBs who then asked for more

- IRMA worked with KPMG to prepare a financial criteria form for mines and a report template for financial auditors
- Forms provided to 2 mining companies to test and provide feedback

# Financial Assurance

## What we've learned?

- Corporate guarantee is a demonstration of financial strength based on balance sheets
- Closure liabilities on balance sheets are only for damage caused to date
- One mining company has suggested balance sheet perspective is better, and identified concerns with financial test criteria
- The other company has not provided feedback or requested clarification

## What we recommend

- **This challenge is holding up reports that are far overdue**
- Reverse our decision to accept corporate guarantee
- Allow sites in unsupported countries to not score critical requirement (applicable for all others)
- Highlight this in report
- Other related requirements will apply, and will result in some does not meet ratings
- Invite public feedback on this requirement in the public comment period

# Examples of Expected New Guidance for Other Financial Surety Requirements

## Subchapter 2.6.7 (Paraphrased)

- The operating company shall provide sufficient financial surety for all long-term activities... Financial assurance shall guarantee that funds will be available, irrespective of the operating company's finances at the time of mine closure or bankruptcy.
- The post-closure financial surety shall be recalculated and reviewed by an independent analyst at the same time as the reclamation financial surety.
- Long-term Net Present Value (NPV) calculations utilized to estimate the value of any financial surety shall use conservative assumptions, including a real interest rate of 3% or less

“This requirement applies to all sites. Sites where financial surety is not supported by government oversight, and where sites do not have financial surety, will not meet this requirement.”



## For your vote

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Reverse your prior decision and facilitate the publishing of reports

Allow sites in countries where financial surety is not possible to not score critical requirement (req. remains applicable for all other sites)

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Other related requirements will apply, and will result in some does not meet ratings

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Highlight in the report when sites are not able to fulfill the financial surety requirements (and the risk)

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Invite public feedback on this requirement in the public comment period

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Revisions to the reporting process

# Why are we proposing change?

- Opportunity to evolve based on experience from the first 11 audits
- Early reports identified:
  - Misalignment between ratings and rationale
  - Failure to consider full requirement
  - Inconsistency across requirements

# Examples of IRMA Report Review Comments

<p>ESIA, and in the development of options to mitigate the potential impacts of the project during and subsequent to the ESIA process.</p> <p><b>(Existing Mines)</b> The operating company shall encourage and facilitate stakeholder participation, where possible, in the development of options to mitigate the potential impacts of the mine.</p>		<p>the monitoring activities established at the ESIA approval. However, the community is not encouraged yet to provide options to mitigate potential impacts of the project.</p>
<p>2.19.3. The operating company shall provide for timely and effective stakeholder consultation, review and comment on the scope and design of the environmental and social monitoring program.</p>	<p>m</p>	<p>Evidence shows that the organization and the local stakeholders meet monthly to discuss various items, including environmental monitoring participation—</p>
<p>2.19.4. The operating company shall encourage and facilitate stakeholder participation, where possible, in the implementation of the environmental and social monitoring program.</p>	<p>L</p>	<p>Evidence shows that the organization and the local stakeholders meet monthly to discuss various items, including environmental monitoring participation—</p>

IRMA Comment:  
 The requirement for existing mines is that they facilitate stakeholder participation in the development of mitigation options. This statement says that the community is not yet encouraged to do this. The rationale would suggest nonconforming. Please review this again.



# Examples of IRMA Report Review Comments

or may be affected by mining-related activities (e.g., KBAs, critical habitat, threatened or endangered species), the operating company shall carry out an impact assessment that includes:

- a. Establishment of baseline conditions of biodiversity, ecosystem services and, if relevant, conservation values (i.e., in protected areas) within the mine's proposed or actual area of influence;
- b. Identification of potentially significant direct, indirect and cumulative impacts of past and proposed mining-related activities on biodiversity, ecosystem services and, if relevant, on the conservation values of protected areas throughout the mine's lifecycle;
- c. Evaluation of options to avoid potentially significant adverse impacts on biodiversity, ecosystem services and conservation values of protected areas, prioritizing avoidance of impacts on important biodiversity values and priority ecosystem services; evaluation of options to minimize potential impacts; evaluation of options to provide restoration for potential and actual impacts; and evaluation of options to offset significant residual impacts (see 4.6.4.1 and 4.6.4.2); and
- d. Identification and evaluation of opportunities for partnerships and additional conservation actions that could enhance the long-term sustainable management of protected areas and/or biodiversity and ecosystem services.

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Documents provided contains ecosystem services baseline (May 2022). However, the agreement is yet to be implemented

IRMA Comment:  
The rationale only points to bullet a, but not bullets b, c and d. Rationale should be reviewed and updated to address additional bullets for a substantially meets rating.

# Why does IRMA's technical review matter?

## Accuracy

- Verify proper use of tools, guidance
- 1<sup>st</sup> report to site is reliable

## Consistency

- Verify consistency across auditors
- Prepare for new auditors

## Credibility

- Balanced view
- Theory of change

## Transparency

- Detail the audit and reporting process

# Best Practice Review

Looking at other standards to understand how they manage the reporting process

## Who we looked at

### Mining/minerals standards

- Responsible Steel
- RMI
- RJC
- TSM
- ASI
- Copper Mark

### Other recognized and global voluntary standards

- FSC
- MSC
- ASC
- RSPO
- Rainforest Alliance

## What we learned

### How do other standard systems do their review?

- 6 (Responsible Steel, RMI, ASI, Copper Mark, ASC, MSC) review reports for:
  - procedural compliance
  - **credibility/accuracy of reporting**
- 1 (RMI) **reviews draft reports in advance of the site's review**

### How is the review documented?

- 3 (Responsible Steel, Copper Mark, MSC) required **documentation of the review process**

(\*see appended table for more details from this review)



## For your vote

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Amend our procedures to adjust the timing and clarify the nature of IRMA's review

Move IRMA's initial review of draft report to before it goes to site. This ensures the site can act on more accurate interpretation.

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Specify the nature of IRMA's review for transparency and to affirm that IRMA's review is not a conflict of interest

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Document the outcomes of the review process itself

Implement formal documentation of reporting process for transparency including preserving draft comments and responses from all parties

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