

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH SESSION:
COUNCIL - PART II**

Informal Working Group - Finance

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council2022@isa.org.jm.

1. Name(s) of Delegation(s) making the proposal:

The Pew Charitable Trusts

2. Please indicate the relevant provision to which the textual proposal refers.

DR 39

3. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

- The facilitator’s proposed amendments are reflected in **red**.
- Our proposed amendments are indicated as in-line edits in **blue**. Proposed deletions of text proposed by the facilitator appears in strikethrough and **bold**.

Regulation 39

Books, records and samples

1. A Contractor shall keep **at a place agreed by the Contractor and the Secretary-General, and make available for inspection and audit under regulation 75, a complete, accurate and proper set of books, accounts and financial records, consistent with internationally accepted accounting principles, are subject to an annual independent audit, and** which must include information
 - (a) that fully discloses **all revenues and** actual and direct expenditures for Exploitation, including capital expenditures, **liabilities** and operating costs and such other information as will facilitate an effective audit of the Contractor’s expenditures and costs; **and**
 - (b) to verify and support all returns or any other accounting or financial reports required by the Authority in relation to Exploitation, including:
 - (i) details of the quantity and grade of the Minerals recovered from each Mining Area; and
 - (ii) details and records[, including port inspections or customs records or processing plant receipt data or records] of sales, shipments, transfers, exchanges and other disposals of the Minerals from the Mining Area, including the time, destination, value and basis of valuation and the quantity and grade of each sale, shipment, transfer, exchange or other disposal;
2. A Contractor shall maintain maps, geological, mining and mineral analysis reports, production records, processing records, records of sales or use of Minerals,

environmental data, archives and samples and any other data, information and samples connected with the Exploitation activities in accordance with the Authority's data and information management policy.

3. ~~To the extent practical, a~~A Contractor shall keep, in good condition, a representative portion of samples or cores, as the case may be, of the Resource category, from each sample collection period identified in the Standard and Guidelines, together with biological samples, obtained in the course of Exploitation until the termination of the exploitation contract. Samples shall be maintained in accordance with the relevant Standards, taking into account the relevant Guidelines, which shall provide the option for the Contractor to maintain them itself or to have such maintenance performed on its behalf in whole or in part by a third party. Upon termination of the exploitation contract, samples shall be provided to the Authority, or otherwise dealt with, in accordance with the Council's reasonable instruction to the Contractor.
4. Upon request of the Secretary-General or an Inspector, the Contractor shall
 - a. deliver to the Secretary-General or Inspector for analysis a portion of any sample or core obtained during the course of Exploitation activities.
 - b. supply or file such record or information contained therein at such times and in such formats as may be reasonably required by the Authority to determine compliance with the Rules of the Authority
5. A Contractor shall, subject to reasonable notice, permit full access by the Secretary-General or an Inspector to the data, information and samples.

4. Please indicate the rationale for the proposal. [150 word limit]

Regarding **paragraph 1**, these amendments would align and merge DR39 ('Books, records and samples') and DR74 ('Proper books and records to be kept'), as it seems unnecessary, confusing and duplicative to retain both of these provisions in different sections of the Regulations.

In addition, we believe the proposal for prior agreement as to the place where records are held would be helpful in cases where the ISA wishes to conduct a surprise inspection: they would need to know where the books are in advance, without asking. Secondly the ISA may prefer to ensure that the books and records are held in a jurisdiction of an ISA member State, as that may facilitate compulsion of production if required (for example, as evidence in litigation). Ideally the records should be held in the sponsoring State, in order to facilitate inspection and enforcement activities, which can be run collaboratively between the ISA and the sponsoring State where it involves evidence or premises within national jurisdiction. In the event that records are held on vessels, then permission to board and inspect would need to be obtained from the relevant flag State. This may also be a relevant factor also in requiring prior agreement of record location.

Regarding **paragraph 3**, it seems this would be an appropriate place to include a provision specifying what should happen to samples once the exploitation contract is terminated and provide the ISA some flexibility on giving those instructions.