

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

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

1. Name of Working Group: Plenary - President's Text

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

The Pew Charitable Trusts

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

Regulation 21

4. 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.

~~Termination of sponsorship~~ Requirement for State sponsorship

1. Each Contractor ~~that is not the Enterprise or a State Party~~ shall ensure that it is sponsored by a State or States, as the case may be, throughout the period of the exploitation contract in accordance with ~~article 153(2)(b) of the Convention and regulation 6, [and to the extent necessary that it complies with regulations 6 (1) and (2)].~~

1.bis. A Contractor whose Contract Area is a Reserved Area shall be sponsored by a developing State.

1.ter. A Contractor shall promptly notify the Authority if the Contractor's sponsoring State or States terminates its sponsorship.

2. A State may terminate its sponsorship by providing to the Secretary-General a written notice describing the reasons for such termination. Termination of sponsorship takes effect ~~upon the date stated in the written notice which must be no earlier than [no later than] [12] [6] months after the date of receipt of the notification by the Secretary-General [unless the notification specifies an earlier date],~~ except for termination due to a Contractor's non-compliance under its terms of sponsorship, in which case termination takes effect no later than 6 months after the date of such notification.

~~2.alt. A State may terminate its sponsorship by providing to the Secretary-General a written notice describing the reasons for such termination and the date termination is to take effect taking into account the following timeframes:~~

~~(i) Termination due to a Contractor's non-compliance under its terms of sponsorship, negligence or environmental damage: termination to take effect no later~~

~~[earlier?] than 6 months after the date of receipt of the notification by the Secretary-General;~~

~~(ii) Termination due to reasons other than those listed in subparagraph (i) above: termination to take effect no later [earlier?] than 12 months after the date of receipt of the notification by the Secretary-General.~~

2 alt bis. ~~If the reasons for termination of sponsorship include Contractor non-compliance under its terms of sponsorship, negligence or environmental damage,~~ that may be a breach of the Rules of the ISA, the Secretary-General shall issue a compliance notice under regulation 103 requiring ~~the Contractor must to suspend its mining operations until the Council has considered the matter in accordance with paragraph 6 below.~~

3. In the event of termination of sponsorship, ~~[due to reasons other than those listed at subparagraph 2(i) above,]~~ the Contractor may ~~shall,~~ within the period before the previous State's sponsorship ends ~~referred to in subparagraph 2 (ii) above,~~ obtain another sponsoring State or States in accordance with ~~the requirements of regulation 6 regulation 21 and in particular in order to comply with regulation 6 (1) and (2).~~ Such State or States shall submit a certificate of sponsorship in accordance with regulation 6. The exploitation contract terminates automatically if the Contractor fails to obtain a ~~S~~sponsoring State or States within the required period. ~~For the avoidance of doubt, the Council shall provide written notice of the termination to the Contractor.~~

3 bis. In the event that the Contractor is able, within the relevant period, to obtain another sponsoring State or States in accordance with sub-paragraph 3, the Authority shall deal expeditiously with any consents that are required as a result under regulations 23 or 24.

4. A ~~S~~sponsoring State or States is not discharged from any obligations ~~[or deprived of any rights]~~ accrued while it was a ~~S~~sponsoring State by reason of the termination of its sponsorship ~~[nor shall such termination affect any legal rights and obligations created during such sponsorship] [consistent with the requirements of contractors, including as set forth in Annex III, Article 17.2(e) of the Convention].~~

5. The Secretary-General shall notify the members of the Authority of a termination or change of sponsorship.

6. After a ~~S~~sponsoring State has given a written notice in accordance with paragraph 2 above, the Council, ~~based on the recommendations of the Commission, which shall take account of the reasons for the termination of sponsorship, [especially in the case of termination of contract attributable to a breach of compliance]~~ ~~[may] [should]~~ shall require the Contractor to suspend, ~~[or continue the suspension of,]~~ its mining operations until such time as ~~[the Contractor has proved to the satisfaction of the Council that the reasons for the termination of sponsorship have been addressed and]~~ a new certificate of sponsorship is submitted.

7. ~~[Nothing in this regulation shall relieve a Contractor of any obligation or liability under its exploitation contract, and the Contractor shall remain responsible and liable to the Authority for the performance of its obligations under its exploitation contract in the event of any termination of sponsorship.]~~

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

Title: It seems illogical for this DR21(1) concerning a requirement for State sponsorship to be entitled ‘Termination of sponsorship’ so we propose separating it into a differently entitled new Regulation 21.

Para 1bis: We would welcome to see this important principle from UNCLOS (that reserved sites should be accessible only to developing countries) operationalised in the Regulations, and suggest an additional paragraph here, to achieve this.

Para 1ter: We suggest moving this wording here from Annex X. It makes sense to have notification obligations for both Contractor and State.

Para 2: This provision should be aligned with the Exploration Regulations, which require a minimum of six months’ notice. Enabling notification of an earlier date would mean there is no minimum time limit; sponsorship could terminate with immediate effect. We recommend this is changed to ‘later date’ so the time limit is 6 months or longer.

We also query the ISA’s jurisdiction to determine that sponsorship termination has taken effect, given that sponsorship is an arrangement between the State and Contractor. So suggest slight wording amendment here to avoid the implication that the ISA is effecting sponsoring termination, rather than the State.

Para 2 alt: The intention behind the proposed 2 alt is not clear to us. It would have the effect of requiring a sponsoring State to withdraw its sponsorship within specific timeframes set by the ISA, thus not allowing a longer period of transition (for the Contractor to find a new sponsoring State and make necessary arrangements to re-locate etc). We do not understand the policy reasons for imposing a time limit in that way. It seems unnecessary interference with the sponsoring State’s own decision-making and could serve to cause a sponsorship vacuum, for timing reasons that seem arbitrary.

Para 2 alt bis: This useful insertion could be further improved if a compliance notice is used to give effect to this suspension, so that the procedure, accountability, and timing is unambiguous.

Para 3: We do not agree with the insertion of ‘[due to reasons other than those listed...]’, could prevent a Contractor from obtaining alternative sponsorship in the event the sponsoring State withdraws sponsorship on the grounds of any act (within the State’s own interpretation) of ‘non-compliance under terms of sponsorship, negligence or environmental damage’. Those criteria have potentially wide interpretation (lawful exploitation activities could result in ‘environmental damage’) and far-reaching implications (effectively, it puts an immediate end to the exploitation contract). This does not align with the triggers for ending a contract that are open to the ISA itself and could lead to unfair outcomes for Contractors.

We suggest this paragraph should be phrased as a ‘may’ rather than a ‘shall’, as the Contractor is not obliged to obtain another sponsoring State, if it is content to let the contract terminate.

Para 3bis: The current drafting does not acknowledge that, to ‘obtain another sponsoring State’, the Contractor would presumably need to establish or identify a new company in the replacement Sponsoring State’s jurisdiction and transfer the rights and obligations under its exploitation contract to that new company - in order to meet the nationality and effective control requirements of UNCLOS. This proposed insertion makes that connection, and aims to facilitate the process to avoid undue delay and suspension for the Contractor.

Para 4: We do not understand the proposed insertion here pertaining to ‘requirements of contractors’. What requirements, and how are these relevant to a State’s legal rights and obligations as an ISA sponsoring State? Or to the UNCLOS section cross-referenced, which provides that ‘the operator shall have the right at any time to renounce without penalty the whole or part of his rights in the area covered by a plan of work’?

Para 6: These insertions are useful, but can be simplified, as no mining activity should take place absent sponsorship. The revocation of sponsorship should always trigger a cessation of operations until a new certificate of sponsorship can be secured.

Para 7: We agree with this insertion.