

**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 23

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.

2alt. A Contractor wishing to transfer rights and obligations under an exploitation contract shall make an application for consent jointly with the transferee to the Commission'.

3. The Commission shall ~~[consider the application for consent to]~~ ~~[review and confirm]~~ make a recommendation to Council about ~~the~~ application for transfer at its next available meeting, provided that the documentation has been circulated at least 30 Days prior to that meeting.

4. The Commission shall ~~[consider whether]~~ ~~[ensure that]~~ review whether the transferee:

- (a) Meets the requirements of a qualified applicant as set out in regulation 5;
 - (b) Has submitted a certificate of sponsorship as set out in regulation 6;
 - (c) Has submitted a form of application as set out in regulation 7 if the Secretary-General considers that there is a ~~[Material Change]~~ to the Plan of Work;
 - (d) Has paid the administrative fee as set out in appendix II;
 - (e) Meets the criteria set out in regulation~~[s-12(4) and]~~ ~~[12]~~ and 13(4), and has provided Environmental Plans that comply with regulation 13 (4) (e); and
 - (f) Has deposited ~~or made arrangements to the Commission's satisfaction towards the deposit of an Environmental Performance Guarantee as set out in regulation~~
5. The Commission shall not ~~[recommend approval of]~~ ~~[sanction]~~ recommend approval of the transfer if it would:

(a) Involve conferring on the transferee a Plan of Work, the approval of which would be forbidden by article 6 (3) (c) of annex III to the Convention; or

(b) Permit the transferee to monopolize the conduct of activities in the Area with regard to the Resource category covered by the exploitation contract for the transferee would monopolize or significantly control the production of any single mineral or metal produced globally as set out in the relevant Standard, taking account of Guidelines.

6. Where the exploitation contract is subject to an encumbrance registered in the Seabed Mining Register, the Commission shall not ~~recommend consent to~~ recommend approval of ~~sanction~~ the transfer unless it has received evidence of consent to the transfer from the beneficiary of the encumbrance.

7. Where the Commission determines that the requirements of paragraphs 4, 5 and 6 above have been fulfilled, it shall ~~recommend approval of~~ ~~confirm~~ recommend approval of the ~~application for consent~~ ~~transfer~~ to the Council. In accordance with article 20 of annex III to the Convention, the Council shall not ~~unreasonably~~ unreasonably withhold consent to a ~~consent to a~~ ~~sanctioning of the~~ transfer if the requirements of this regulation are complied with.

10. ~~The terms and conditions of the transferee's exploitation contract shall be those set out in the standard exploitation contract annexed to these Regulations that is in effect on the date that the Secretary General or a duly authorized representative executes the assignment and novation agreement.]~~

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

Para 2: The text for DR23(2), as revised, appears to replicate 2 alt.. This may be an error, as it means the original proposed language is lost. The proposed 2 alt. language is not consistent with Regulations drafting style required to impose enforceable requirements (i.e. passive voice, use of 'will' instead of 'shall').

Para 3: The wording in paragraph (3) should reflect the LTC's role (and terminology used by UNCLOS) to review and make recommendations.

Para 4: In the first line of (4), and throughout this Regulations, we recommend use of the word 'review' rather than 'ensure', to be consistent with UNCLOS, and also as it is not clear how the LTC could 'ensure' that the transferee meets the criteria: the characteristics of the transferee is outside the LTC's control.

With regards to sub-paragraph (f), DR26 requires an Environmental Performance Guarantee to be lodged before production, but not necessarily at any earlier stage (and a transfer covered by DR23 may take place at an earlier stage). Also is it reasonable to expect the Environmental Performance Guarantee to be paid before the ISA has approved the transfer? The proposed edit here seeks to address those two points.

Para 5: In the first line (and throughout this regulation), we recommend use of the terminology 'recommend approval of' rather than 'sanction', to be consistent with UNCLOS. Also because the word 'sanction' in English can have different meanings. As well as meaning an official approval, it can also mean a penalty. so we suggest avoidance of the word in the Regulations for the avoidance of confusion .

The ISA needs to agree a definition of 'monopolization' to be applied for the purposes of transfer approval (and also contract approval, in DR15). UNCLOS Annex III, Article 6(3)(c) contains one example of possible monopolization. But that applies only to developed States with nodule contracts (and not to non-State Contractors, any entity operating in reserved areas, or any crusts or sulphides contracts); and sets an almost unattainable threshold of geographic coverage before monopolization is deemed to have occurred (e.g. 2% of the Area). A broader definition for monopolization should be agreed by the Council, and provided in the Regulations (e.g. by a new insertion of a defined

term in the Schedule to the Regulations). This may be a subject upon which Council could request a recommendation from the LTC?

Para 7: The word 'unreasonably' in paragraph (7) is a direct quotation from UNCLOS Annex III, and the reason for its proposed deletion is not clear to us. We suggest retaining it.

Para 10: A transfer under DR23 should not create a new contract. A novation agreement enables all the rights and obligations of one contract to be passed to the transferee, (i.e. the original contract is duplicated, without amendment (save for the parties' names)).