

**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 24

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.

1. For the purposes of this regulation, a “change in control” occurs where there is a change ~~[in 50 per cent or more of]~~ in the ownership of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, ~~[that results in the holding of the beneficial ownership of 50% or more of the Contractor or the controlling interest in the Contractor by an entity that previously held a minority share or had no prior equity interest.]~~ or ~~the same~~ change in ~~50 per cent or more of the~~ ownership of the entity providing an Environmental Performance Guarantee ~~[which by bringing the ownership to 50% constitutes a change in the effective control].~~
2. Where there is a change of control of the Contractor, or there is a change of control in any entity providing an Environmental Performance Guarantee on behalf of a Contractor, the Contractor shall, ~~[where practicable]~~ [as soon as reasonably practicable but no later than 24 hours], notify the Secretary-General and the sponsoring State in advance of such ~~change of control,~~ ~~[but in any event within 90 Days thereafter]~~ [and in the case of an entity providing an Environmental Performance Guarantee, no later than within 90 Days thereafter]. The Contractor shall provide the Secretary-General with such details as he or she shall reasonably request of the change of control including whether or not the change of control affects the Contractor's nationality or State of effective control, for the purposes of determining the sponsoring State. The Secretary-General shall pass this information to the Commission for consideration.
3. After consulting the Contractor or entity providing the Environmental Performance Guarantee, as the case may be, the ~~Commission~~ Secretary General may:
 - a. Determine that, following a change of control of the Contractor or the entity providing the Environmental Performance Guarantee, the Contractor will continue to be able, ~~and in particular will have the financial capability,~~ to meet its obligations under the exploitation contract or Environmental Performance Guarantee, in which case the contract shall continue to have full force and effect;

- b. In the case of a Contractor, treat a change of control as a transfer of rights and obligations in accordance with the requirements of these regulations, in which case regulation 23 shall apply; or
 - c. In the case of an entity providing an Environmental Performance Guarantee, require the Contractor to lodge a new Environmental Performance Guarantee in accordance with regulation 26, within such time frame as the Secretary-General shall stipulate.
 - (d) Confirm with the sponsoring State whether its sponsorship continues, or require a written notice under regulation 21 bis. where sponsorship has terminated.
4. Where the ~~Commission Secretary-General~~ determines that, following a change of control, a Contractor may not be able ~~have the financial capability~~ to meet its obligations under its exploitation contract, ~~the Secretary-General shall inform the Commission accordingly. [The Commission itself shall inquire the Secretary-General about the financial capability of a Contractor, following a change of control.]~~ The Commission shall submit a report of its findings and recommendations to the Council.

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

Para 1: Several stakeholders had noted a drafting error, corrected by this proposed amendment. A change in control can occur with any change in ownership e.g. if one party owns 49.9%, a change of control could take place if that party acquires a further 0.2% ownership. The proposed amendments now appear to address this point. Though we are unsure about the final amendment, which would introduce the idea of a change in effective control. The term ‘effective control’ is usually a term of art used to describe the relationship between a sponsoring State and its ISA contractor. We do not believe this is what is meant by the use of ‘effective control’ here, and suggest the wording be deleted to avoid confusion or unintended consequences. We do however agree that a change in control of a Contractor may have implications for ‘effective control’ by the State, and we suggest some wording to address this important point, in paragraph (2), instead.

Para 2: Various sensible changes are proposed here. We believe there should also be a review role here for the LTC. As a change of control may result in a new entity owning or performing the exploitation contract, the considerable discretionary power bestowed upon by the Secretary-General in this DR24 would be better reserved for the LTC.

Para 3 (a): The review of the proposed transfer of an ISA contract should not be restricted only to financial capability. All criteria are potentially relevant.

Para 3 (d): An additional paragraph (d) requiring confirmation of the sponsoring State’s continued sponsorship is suggested because a change of control of a Contractor may affect its nationality or residence.