

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART I**

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.im.

1. Name of Working Group:

President

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

Republic of Costa Rica

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

DR 36

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. A Contractor shall obtain and thereafter at all times maintain, and cause its subcontractors to obtain and maintain, in full force and effect, insurance with financially sound insurers satisfactory to the Authority, of such types, on such terms and in such amounts in accordance with applicable international maritime practice, consistent with Good Industry Practice and as specified in the relevant [Standards](#), [taking account of the Guidelines](#).

1 bis. Upon receipt of a written request from a Contractor, the Commission shall, provide advice to the Contractor as to the satisfactoriness of a proposed insurance policy, in accordance with the relevant [Standards](#), [taking account of the Guidelines](#).

1 ter. The insurance required under this regulation shall:

(a) be in effect from the start date of the Contract, until such time as the Environmental Performance Guarantee has been released back to the Contract in full by the Authority; and

(b) shall cover all potential harms to people, property, natural resources and environment that may occur, wherever located, or howsoever caused, as a result of the Contractor's activities in the Area.

~~{2. Contractors shall include the Authority as an additional assured. A Contractor shall use its best endeavours to ensure that all insurances required under this regulation shall be endorsed to provide that the underwriters waive any rights of recourse, including subrogation rights against the Authority in relation to Exploitation.}~~

3. The obligation under an exploitation contract to maintain insurance as specified in these [Regulations and the Standards Guidelines](#) is a fundamental term of the contract. Should a Contractor fail to maintain the insurance required under these regulations, the ~~Secretary General~~ [Compliance Committee](#) shall issue a compliance ~~notice order~~ under

regulation 103. ~~The Secretary General shall notify the Council at its next available meeting of such failure, and the corrective measures taken by the Contractor.~~

4. A Contractor shall not make any ~~M~~material ~~c~~Change to or terminate ~~the any~~ insurance policy ~~required under this regulation [related to its Exploitation activities in the Area]~~ without the prior consent of the Council [Compliance Committee] ~~Secretary-General.~~

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

As a general comment, the LTC advises that it anticipates further amendment to DR36 following a report by the Secretariat on insurance requirements and market availability [ISBA/25/C/18]. We note that a call for applicants on such a study was issued within the past months, so it may be worth waiting for that study to be published before further considering this regulation. Regardless, we believe it would be helpful to be more precise with this insurance requirement (as proposed by us in additional bis. and ter. text, below) as it is clear from conversations on the floor there are substantively differences in opinion about what this insurance covers with significant implications on cost to Contractors and liability risk of sponsoring States and the ISA e.g. standard maritime operations or all exploitation activities. As also mentioned by the United Kingdom, we believe insurance would provide a necessary mechanism to protect and indemnify the ISA and potentially affected persons in the event of an incident. Insurers can also play a useful role to demand best-practice standards for the operations they are insuring. With these positions in mind, we have suggested two new provisions 1(bis) & 1(ter) which would avoid a Contractor being left in a situation of uncertainty as to whether or not it may be inadvertently in breach of this fundamental contract term and specify the duration and scope of the insurance.

Regarding paragraph 2, as also mentioned by the United Kingdom, we believe deletion of this provision is premature. The inclusion of this provision would enable the ISA to claim on the Contractor's own insurance for any losses it suffers as a result of Contractor action (or inaction), rather than having to sue the Contractor; and also may prevent the insurance company from suing the ISA, if any losses the insurance company has to pay out for arose because of ISA negligence or fault. We do recognize that there are some issues with provision, such as the viability of this requirement may turn on the availability of insurers willing to include the ISA as an additional insured. We presume concern about the infeasibility of this option is the reason for proposed deletion here, which we do see as reasonable. In any matter, the forthcoming report by the Secretariat on insurance requirements and market availability should be helpful to shed light on this matter and inform further discussions on this regulation.

Regarding paragraph 3, this compliance notice requirement under this paragraph will have to be aligned with the decisions made regarding DR 103, and which ISA organ has appropriate authority to issue compliance notices. We also recommend deletion of paragraph (3)'s final line about reporting, as it conflicts with DR103, which (as currently

drafted) requires immediate report to the Council upon issue of any compliance notice. Regardless, this provision should be bracketed until DR 103 is more 'stable'.

Regarding paragraph 4, the Secretary-General is not the appropriate decision-maker for whether a Contractor can make a material change to a policy whose adequacy is a fundamental term of the contract approved by the Council. We suggest that paragraph (4) require consent from the Council. If there are concerns about agility of decision-making, perhaps the appropriate compliance entity (e.g. compliance committee) could serve this function more responsively.