

**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.jm.

1. Name of Working Group:

President

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.

Annex I

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.

Section I

13. If the applicant is a juridical person:

(a) Identify applicant’s place of registration;

(b) Identify applicant’s principal place of business/domicile; and

(c) Attach a copy of applicant’s certificate of registration.

(d) Identify the identities and locations of the applicant’s:

(i) management including any members of its board of directors, and

(ii) ownership, including any persons or entities holding 5 percent or more of the applicant’s equity, if different from the place of registration / domicile - for example in the case that the applicant is a subsidiary of a parent company located in a different jurisdiction.

13 bis. Provide any additional information to assist determine the identity nationality of the applicant, or by whose nationals the applicant is effectively controlled.

13 ter. Where the applicant is a company, provide an organisational chart or other description of any company group structure, including parent, subsidiary or other associated companies.

15. In respect of each Sponsoring State, provide the date of deposit of its instrument of ratification of, or accession or succession to, the United Nations Convention on the Law of the Sea of 10 December 1982 and the date of its consent to be bound by the Agreement relating to the Implementation of Part XI of the Convention.

15bis. Provide information about relevant national laws and administrative measures that would apply to the applicant in its conduct of Activities in the Area

15ter. A description of the Contractor’s and the sponsoring State’s (or States’) compliance enforcement strategies, and how these align with the Rules of the Authority.

15quarter A description of the sponsoring State’s (or States’) compensation mechanisms or other mechanism for relief in respect of damage caused by pollution of the marine environment in accordance with Article 235 of UNCLOS

Section II

17. Define the boundaries of the area under application by attaching a list of geographical coordinates (in accordance with the ~~[World Geodetic System 84]~~ ~~[most recent applicable international standards used by the Authority]~~ ~~[and a georeferenced file and a map with the limits of the requested area]~~ showing the relevant sites proposed as Contract Area and Mining Area and any other features that can be usefully marked upon the map at the time of application, including Impact Reference Zones and Preservation Reference Zones, Areas of Particular Environmental Interest, Sites in Need of Protection, or other sites designated for particular status under the rules, regulations, procedures, Standards, or Regional Environmental Management Plans of the Authority. This may include designations made by other competent authorities.

Section III

18. Provide detailed documentary proof of the applicant's technical capability, or access thereto, to conduct the Exploitation and to Mitigate Environmental Effects.

19. Provide documentary proof that the applicant has the ability to comply with relevant safety, labour and health standards ~~and is able to apply its policies in a non-discriminatory and gender-sensitive way.~~

20. Provide a description of how the applicant's technical capability will be provided through the use of in-house expertise, subcontractors and consultants on the proposed Exploitation activities. ~~Provide organograms of staffing, and staffing data provided should be disaggregated by gender.~~

~~20bis. Identify the in-service and planned submarine cables and pipelines in, or adjacent to, the area under application; and provide documentary proof of the measures agreed between the applicant and the operators of the cables and pipelines to reduce the risk of damage to the in-service and planned submarine cables and pipelines.~~

~~20 ter. Provide evidence that the applicant has demonstrated a satisfactory record of past operational performance and compliance, both within the Area and in other States' jurisdictions.~~

Section IV

22. If, subject to regulation 22, an applicant seeking approval of a Plan of Work intends to finance the proposed Plan of Work by borrowing, attach details of the amount of such borrowing, the repayment period and the interest rate, together with the terms and conditions of any security, charge, mortgage or pledge made or provided or intended to be made or provided or imposed by any financial institution in respect of such borrowing ~~and the predicted debt-to-equity ratio.~~

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

Regarding Section 1, for subparas. 13(d) and 13bis we have relocated text previously included in DR5 regarding qualifications for applicants. Determination of applicant nationality may be more complex for private sector applicants, and this has ramifications for the UNCLOS requirement of 'effective control' and sponsorship by the relevant sponsoring State. This is the rationale for making more specific enquiry on these points in the application process. For more on this point, please see the commentary and the proposed definition of 'effective control' in the Schedule to the Regulations, below. In recent times, the ISA has awarded contracts for exploration to different companies sponsored by different States, which have later transpired to be subsidiaries of the same parent company. The parent company was not named in the applications. To properly assess potential monopolization or contractor dominance, the ISA needs to require information about company structure and ownership of applicants at the time of application. This should be sufficient to allow 'piercing of the corporate veil', to identify where parent companies may have silent involvement in more than one ISA contractor. We propose a few additional paragraphs as well. For 15bis, we believe additional language would be helpful to ensure that a sponsoring State takes basic steps necessary to ensure compliance by the Contractor with UNCLOS and the ISA's rules, and enables civil law claims against Contractors within its domestic legal system. For 15ter, the ISA should require, at contract application stage, a description of the sponsoring State compliance regime including whether the domestic law provides recourse to criminal prosecutions for Contractor breaches. ISA should require Contractors, and encourage sponsoring States to operate

compliance enforcement strategies aligned with that of the ISA. And lastly, for 15quarter, we note that UNCLOS Article 235 imposes a direction obligation upon States. Unless the ISA collects information as to these national mechanisms, it may be very hard for an affected party to access compensation measures in practice.

We believe our proposed edits for the other sections are self-evident.