

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

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'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.

DR 94

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.

2. The Council shall consider ~~and approve~~, upon the recommendation of the Commission [and taking into account statements submitted by Stakeholders during a public consultation,] the Standards, ~~and shall provisionally adopt Standards pending approval by Assembly~~, provided that such Standards are consistent with the intent and purpose of the Rules of the Authority ~~[and] [including] [the decisions of the Council and the Assembly]~~ [and, ~~to the extent relevant~~, developed on the basis of Best Available Scientific Evidence, ~~Best Environmental Practices, Best Available Techniques, and Good Industry Practice~~]. If the Council does not approve such Standards, the Council shall return the Standards to the Commission for reconsideration in the light of the views expressed by the Council. ~~[The Standards approved by the Council shall remain effective on a provisional basis until approved by the Assembly or until amended by the Council in the light of any views expressed by the assembly].~~

3. [The Standards contemplated in paragraph 1 above [may] ~~[must]~~ include both qualitative and quantitative standards, ~~[if applicable]~~, and ~~may must~~ include all the methods, processes and technology required to implement the Standards.]

~~[4.alt. Standards [or amendments thereto] adopted by the Council and approved by the Assembly shall be legally binding on Contractors, [member States] and the Authority [from the date of their adoption] and the Commission shall review these Standards at least every five years from the date of their adoption or revision and advise the Council, in the light of improved knowledge or technology, as to whether any revision is required]~~

~~[5.bis. — To the extent of any inconsistency between a Standard and amendments thereto, and an already approved Plan of Work, a Contractor following a reasonable transition period, shall use its best efforts to comply with any additional changes to its Plan of Work as a result of the amendment.]~~

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

We strongly support the reference in paragraph (1) to an Annex, which can set out transparent procedures and objective criteria for identifying and recruiting external experts where required to support the ISA's work. This Annex can be referred to in each regulation that requires the ISA to involve competent independent experts (which is inserted in various parts of the regulations without any further explanation). We would also suggest that this term (ie 'competent independent expert' is used consistently throughout the Regulations, instead of various other formulations (e.g. 'recognised experts' or 'independent experts' which are used elsewhere). The term 'competent independent experts' could also be defined in the Schedule, as a person identified in accordance with the Annex, and then the Annex would

not need to be referenced in the Regulations every time. NB we note that there is already an Annex X ('Standard Clauses for Exploitation Contract') so we believe the reference here should be to a new Annex XI.

We prefer 1(a) alt noting that the terminology 'human health and safety' is used elsewhere in the Regulations, rather than 'operational safety, which' is not. So this amendment provides consistency.

We note that 1(c) may need updating once the text of DR45 is settled (as DR45 does not, for example, as currently drafted refer specifically to 'requirements relating to the Environmental Effects of Exploitation activities', as DR94(1)(c) implies).

We support the proposed new paragraph 1 ter. which sets out the general purpose of the Standards, to help ensure all parties share mutual understanding. The need to articulate guiding objectives for Standards has been raised in various ISA discussions, including the 2019 workshop held in Pretoria focused on Standards and Guidelines. These points could alternatively be included in a standalone Regulation setting out the ISA's regulatory strategy, or DR2's list of ISA fundamental principles and policies.

On para 2, we support the text, as amended in DR94(2). We are particularly supportive of the inclusion in the process for the need to take into account Stakeholder views obtained via a public consultation. Though we are aware the specific drafting may change according to the results of the inter-sessional working group who focused on standardising stakeholder consultations in the Regulations.

We also recall the LTC Chair's report in the 25th session (ISBA/25/C/19/Add.1) which specifically recommended 'that draft Regulation 94 be amended to reflect that Standards be approved by Assembly'. In view of this, we suggest to add Assembly approval into this DR94(2) and also DR94(4 alt) process requirements.

The use of 'must' in paragraph (3) of DR95 seems unduly restrictive. There may be Standards that legitimately do not contain qualitative AND quantitative elements, or which do not concern methods, processes and technology. We suggest to use 'may' instead of 'must' in both places in paragraph (3) to allow the Council sufficient flexibility to draft Standards as is appropriate to the specific subject matter or issue before them.

We support the text proposed in DR94 (4 bis), (4 ter) and (5). However we suggest deletion of DR 94 paragraph 5 bis. Firstly because the meaning is not very clear from the drafting. Secondly because it appears to undermine paragraphs 4 alt and 4 bis which expressly state that an existing Contractor is legally bound to adhere to a revised or new Standard after an appropriate transition period (not only to give it their best efforts). Thirdly because this provision would appear to allow some contractors not to adhere to a Standard (because their contract pre-existed it), while requiring others to adhere to the same Standard (because they obtained their contract at a later date), which would not be providing a level playing field for contractors. We therefore suggest deletion, or alternatively para 5 bis could be amended to provide that, in the event of inconsistency between a Standard and an existing Plan of Work, the Contractor shall during the transition period, make necessary amendments to the Plan of Work pursuant to the process prescribed by Regulation 57.