

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29TH 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's text

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

Federal Republic of Germany

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

DR 26

Red text is in original draft; **blue text** indicates Germany's textual proposals

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.

Regulation 26 [President's Text]

Environmental Performance Guarantee

...

2. The required form and amount of the Environmental Performance Guarantee shall be **[assessed and recommended by the Commission and]** determined **[by the Council]** according to the applicable Standards and take account of the applicable Guideline, and shall reflect the forecasted costs required for:

- (a) The premature closure of Exploitation activities;
- (b) The decommissioning and final closure of Exploitation activities, including the removal of any Installations and equipment; and
- (c) The post-closure monitoring and management of residual Environmental Effects.

3. The amount of an Environmental Performance Guarantee may be provided by way of instalments over a specified period. **[In such cases, Commercial Production may only commence once the full amount has been provided.]**

[3bis. The Environmental Performance Bond shall take the form of a letter of credit or surety bond guaranteed by a financial institution with a long-term credit rating of AA- or better from Fitch Ratings, Moody's or Standard & Poor and meeting the other financial criteria provided for in the Standard.]

...

5. A Contractor shall, as a result of any review under paragraph 4 above, recalculate the amount of the Environmental Performance Guarantee within 60 Days of a review date **and** submit this calculation to the Secretary General for forwarding to the Commission for their review. **[The Commission shall promptly assess and make appropriate recommendations to the Council, which shall determine the revised amount. Within 30 days, the Contractor shall] and** lodge a revised guarantee in favour of the Authority.

...

8. **[The lodging of an Environmental Performance Guarantee does not relieve the Contractor of its obligations that are subject of this regulation. Refusal or reluctance on the part of the Contractor to fulfil such obligations shall be subject to the relevant compliance measures under these Regulations.]** The provision of an Environmental Performance Guarantee by a Contractor does not limit the responsibility and liability of the Contractor under its exploitation contract in the amount of such guarantee. **[Should the Authority be compelled to make recourse to the Environmental Performance Guarantee due to any non-compliance by the Contractor of its obligations that are the subject of the Environmental Performance Guarantee, the Contractor remains liable to the Authority for any direct, incidental or additional costs incurred by the Authority.]**

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

- General comments: Germany recalls some delegations, including a regional group, previously voicing support to rename the EPG as Decommissioning Bond. We are open to that suggestion since the EPG seems to specifically deal with mine closures.
- Para 2: Germany supports the proposed additions in this para, namely, that the Commission should assess and recommend the form and amount of the guarantee or bond, and that the Council makes a determination thereupon. These additions give clarity to the process.
- Para 3: Germany supports the proposed additions as reflected in the last sentence. It is important to ensure that commercial production does not commence before the full amount has been provided.
- Para 3bis: Germany notes the President's suggestion to move this provision to a Standard or Guideline. While we are amenable to this proposal and can agree to moving this provision to a Standard, we believe the streamlining process will take place at a future date. In order to ensure that we do not lose track of provisions such as this, we recommend retaining this provision in the regulations for the time being until the streamlining process takes place.
- Para 5: Germany welcomes the textual additions to this para. The additions provide further clarity on the review process on the part of the Authority, which should involve the Commission and the Council as per the initial process.
- Para 8: Germany supports the textual additions to this para. In our view, the lodging of a guarantee or bond should not in any way serve as a motivation for contractors to not comply with their obligations under the contract. Rather, it would only apply in strictly limited circumstances where the contractor is not able to perform its obligations. Moreover, the contractor must be liable to the Authority for any costs incurred because of such recourse.