

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28<sup>TH</sup> 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](mailto:council@isa.org.jm).*

**1. Name of Working Group:**

Open Ended Working Group on Financial Terms of a Contract

**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 23

**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.**

- **Red font** are proposed amendments by the Facilitator in this revised text.
- Our proposed amendments and our questions or comments regarding the facilitator’s remarks are indicated as in-line edits in **blue**. Proposed deletions of text proposed by the facilitator appears in strikethrough and **bold**.

~~6.ter. The Authority shall **issue** ~~publish~~ a Standard for the effective operation of the Transfer Profit Share.]~~

7. Where the Commission determines that the requirements of paragraphs 4, 5 ~~and 6~~ [and 7 of this regulation] ~~above~~ have been fulfilled, it shall recommend approval of the application for consent to the Council. In accordance with article 20 of annex III to the Convention, the Council shall not withhold consent to a transfer if the requirements of this regulation are complied with. Once the Council has received a recommendation from the Commission, the Council will inform the Contractor of the Council’s decision within 30 Days. In the event an applicant for the transfer of an exploitation contract fails to demonstrate to the satisfaction of the Commission that the requirements of paragraphs 4, 5, and 6 have not been fulfilled, the Commission shall not approve such transfer. In the event of any transfer arising out of a change of control of the Contractor where the Commission determines that the requirements of paragraphs 4, 5, and 6 have not been fulfilled, the related Exploitation Contract shall terminate automatically.

~~10. [The terms and conditions of the transferee's exploitation contract shall be those set out in the standard exploitation contract annexed to these Regulations that is in effect on the date that the Secretary-General or a duly authorized representative executes the assignment and novation agreement.]~~

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

We prefer retention of original para 4, as more comprehensive and clear in its scope than proposed 4 alt.

Regarding paragraph 5, we stress that the term monopolization needs a definition for the purposes of these Regulations. According to Annex III of UNCLOS, a Plan of Work should not be awarded by the ISA where to do so would permit a State Party or entities sponsored by it to monopolize the conduct of activities in the Area or to preclude other States Parties from activities in the Area. We note that Article 6(3)(c) of Annex III contains one example of possible monopolization. But that applies only to developed States with nodule contracts and not to non-State Contractors or any entity operating in reserved areas, or any crusts or sulphides contracts. It also sets an almost unattainable threshold of geographic coverage before monopolization is deemed to have occurred, which is 2% of the Area. Pew suggests that a broader definition for monopolization should be agreed by the Council, and provided in the Regulations. This could be done by a new insertion of a defined term in the Schedule to the Regulations. We note the suggested text in the comment box, and are open to further discussions on this text though aren't entirely sure about the rationale for the proposed percentage. This does seem like an important policy point, and we think it may be a subject upon which Council could request a considered and expert recommendation from the LTC.

We support the addition of paras 6bis and 6ter to include an obligation for the ISA to levy a transfer profit share. 6ter could be slightly amended to say "issue" instead of "publish" for consistency across the regulations.

We support the deletion of para 10, which seeks to provide for the terms and conditions of a new contract for the transferee. The reason we request deletion, is that a transfer under Draft Regulation 23 does not create a new contract. It is clear from paragraph 9 that it is an assignment and a novation. A novation agreement enables all the rights and obligations of one contract to be passed to the transferee - that is, the original contract is duplicated, without amendment (save for the parties' names).