

**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:

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.

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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**.

[2.bis. Once the Contractor determines that it is engaging in sustained large-scale recovery operations which yield a quantity of materials in excess of the thresholds specified in the Standards, the Contractor shall promptly notify the Secretary-General of the proposed date of commencement of Commercial Production together with supporting documentation and other evidence as specified in the Standards. The Secretary-General shall transmit the notification and supporting documentation and evidence to the Commission, which shall consider the proposal and supporting materials and approve or reject the Contractor’s proposed date.

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

On 2bis, we are unclear whether this intends to make a definition of ‘Commercial Production’ whereby it means ‘sustained large-scale recovery operations which yield a quantity of materials in excess of the thresholds specified in the Standards’, noting also that this wording is almost identical to the place-holder definition of Commercial Production, in the Schedule.

If not, and if this is in fact a precursor for Commercial Production, then we find ourselves confused as to what is required to reach Commercial Production - and concerned that a Contractor could be carrying out large-scale operations that yield an excessive quantity of material, but not pay royalties upon it.

We are unclear also from the drafting whether the date nominated is a date in the past - which would seem odd, and bad practice if the ISA is notified of commencement of Commercial Production only in retrospect. Especially as this provision seems to allow a great deal of discretion to the Contractor for when to make that notification.

We would prefer to see more objective verifiable criteria, set, determined and easily auditable by the ISA, for when Commercial Production commences. This may be an area in which precedent from national jurisdiction is useful. We note, for example, the definition of 'Commercial Production' in the Model Mining Development Agreement (prepared by the Mining Law Committee of the International Bar Association.) which is "production equal to some specified percentage, such as say (60.0%), of the Project's constructed initial annual design capacity" as shown in the Mining Workplan, averaged over a continuous three-month period". A definition along these lines could be addressed in Standards.

We agree with the other participant who called for the necessary parameters to be objective, easily auditable by the ISA and with no potential for manipulation or misinterpretation.

We support the alt proposal that the details for calculating Commercial Production may be set out via a Standard, as such a subsidiary instrument may be easier to amend over time than the Regulations should that prove necessary. However the date of Commercial Production is such an essential component of the regime, triggering significant implications including royalty payment, and closure plan implementation, that we would like to seek assurance that the details of any such Standard would be agreed at the same time as these Regulations, and before any exploitation contract may be awarded.