

**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.

DR 76

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**.

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

We recommend merging the DR 72 request for further information from the Contractor by the Secretary-General with this regulation, which seems to be dealing with the same issue – albeit with different deadlines. We wonder if the two can be merged to avoid duplication, but in a way that retains appropriate triggers and timeframes for when the SG can make such a request and the Contractor’s reply.

As a general point and was raised by other member States in July, the Secretary-General seems to be the organ solely responsible for dealing with royalties, this includes receiving the royalty return, determining whether more information is needed, determining if there should be a refund, agreeing with the Contractor where their records will be held, assessing whether a royalty return is correct and levying a charge for outstanding amounts - even receiving an appeal to that levy themselves. The ISA’s subsidiary organs are frequently omitted from procedures in this Part of the Regulations, and nor do the Council or the Assembly seem to be involved as a back-stop or overseeing this stage. This seems at odds with how other matters are dealt with in the Regulations, and we wonder if other ISA organs should be more involved in the management of royalties (such as the Finance Committee, or the Compliance Committee), and the Secretary-General less relied upon - as is currently drafted in this Part of the Regulations? For example, in paragraph 5 of draft regulation 76, the Secretary-General seems to be inappropriately managing royalty issues on his or her own, even to the extent of reviewing his or her own decision under paragraph (4), and then reviewing his own review decision under (4 bis)! We consider it would be sensible and more accountable to have the LTC, or the Finance Committee, or the Compliance Committee or the Council engaged at some points to supervise the Secretary-General’s work and/or provide an independent review of decisions. In regulation 77, paragraph 2 we also see the Secretary General making an important decision, being the party who reviews that decision, as well as being the responsible decision-maker for a subsequent appeal against his or her second decision. This seems to us to be too

much power, without any oversight. Again, we consider it would be sensible and more accountable to have the Finance Committee or the Compliance Committee or the Council engaged at some points to supervise the Secretary-General's work and/or provide an independent review of decisions. The language proposed for DR77(2)(alt) could be replicated here in DR76 for this purpose.

Regarding para 4bis, we understand the intent in introducing a review mechanism, but for the reasons just stated, do not believe that the responsibility to review a decision taken by the Secretary-General should lay solely with the Secretary General, as currently proposed in 4bis.