

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28<sup>TH</sup> SESSION: COUNCIL -  
PART III**

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.im](mailto:council@isa.org.im).

**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 21

\*Blue font are proposed amendments by the Council President.

\*Pew's amendments are indicated as in-line edits in red font.

**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.alt. Without prejudice to any terms, rights or obligations between a State and a Contractor under the terms of sponsorship, [as defined in this Regulations, if] a State may terminate its sponsorship [of a Contractor, it shall promptly] by providing to the Secretary General with a written notice describing the reasons for such termination and the date the termination is to take effect, and no earlier than the following timeframe:~~

- 5- ~~Termination due to a Contractor's material non-compliance under its terms of sponsorship: termination to take effect [no earlier] [no later than] [6] months after the date of receipt of the notification by the Secretary General;~~
- 6- ~~Termination due to reasons other than those listed in subparagraph (i) above: termination to take effect no [earlier] [later] than 12 months after the date of receipt of the notification by the Secretary General.~~

2 alt.bis. If the reasons for termination of sponsorship include Contractor non-compliance under its terms of sponsorship, the Contractor must **immediately** suspend its mining operations until the Council has considered the matter in accordance with paragraph 6 below.

4. A Sponsoring State or States is not discharged from any obligations accrued while it was a Sponsoring State by reason of the termination of its sponsorship nor shall such termination affect any legal rights and obligations created during such sponsorship ~~[consistent with the requirements of contractors, including as set forth in Annex III, Article 17.2(e) of the Convention].~~

6. After a Sponsoring State has given a written notice in accordance with paragraph 2 above, **due**

to reasons listed in subparagraph 2 (i), the Council, based on the recommendations of the Commission, ~~which shall take account of the reasons for the termination of sponsorship, especially in the case of termination of contract that also equates to a material breach of compliance with the terms of the exploitation contract [may]/[shall]~~ consider its own investigations and compliance action under Part XI of these Regulations, on the basis of the information supplied by the terminating sponsoring State. The Council shall apply regulation 29 bis, and shall require the Contractor to ~~suspend, or~~ continue the suspension of, its mining operations ~~unless and until such time as [the Contractor has proved to the satisfaction of the Council that the breach of compliance has satisfied itself that the Contractor is operating in compliance~~ with the exploitation contract, and a new certificate of sponsorship is submitted.

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

Para 2: For 2 alt, although we appreciate this is consistent with the Exploration Regulations, we would question the lawfulness and the reasoning for the ISA imposing specific time limits on a State's termination of sponsorship as laid out in paras. (i) and (ii). It seems unnecessary interference with the sponsoring State's own decision-making, where there may be very good reasons for a shorter termination period - and could serve to cause a sponsorship vacuum or liability confusion, for timing reasons that could be arbitrary.

For 2alt bis, we generally support this provision but did want to note as a general comment that there is inconsistency in the terminology used across here and across the regulations to describe what, specifically, is suspended with undefined terms such as 'operations', 'activities', 'production', or 'contract' being used (see 21 28, 29, 80, 99 and 103). We believe this leads to ambiguity, subjective interpretation, and may present difficulties for the ISA to enforce the requirements. In addition, some of the suspension provisions lack clear decision-making procedures and decision points, particularly with regard to when activities may or must re-commence.

Para 4: We suggest deleting the bracketed text as it is not clear to us what "requirements of contractors" are being referred to here.

Para 6: It seems to us that this para deals exclusively with termination of sponsorship due to non-compliance and as such should reference subparagraph 2(i). If it is meant to deal with both reasons specified under subparagraph 2 it may be more clear to divide this into two separate provisions. Concerning sponsorship of termination due to non-compliance, we consider that the State's notice of contractor non-compliance should be a trigger for the ISA's own investigations / consideration of compliance actions and have proposed wording to that effect. Lastly, we have proposed a new regulation (29bis) and referenced that here which would address procedural requirements around suspensions and provide consistency across the various suspension provisions contained throughout the Regulations