

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH
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.jm.

1. Name of Working Group:

Institutional Matters

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 12

Red text is in original draft; magenta text indicates Pew'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.

[2.The Commission shall consider applications expeditiously and shall endeavour to submit its reports and recommendations to the Council no later than [alt 1. 120] [alt 2. 180][alt 3. 275] Days from whichever date occurs later out of:

- (a) the close of the comment period, in accordance with Regulation 11(1)(a), or
- (b) the date of submission of a revised plan, in accordance with Regulation 11(2 bis),
or
- (c) the date the Commission receives additional information or amendments to the Plan of Work requested by the Commission under regulation 14.]

3 alt. The Commission shall, in considering a proposed Plan of Work, apply the Convention, the Agreement, and the Rules of the Authority in a uniform and non-discriminatory manner, and ensure its compliance with [shall have regard to] apply the principles, policies and objectives relating to activities in the Area [as provided for in [the Convention,] [the Preamble,][and Part I of these regulations],[and in particular the manner in which the proposed Plan of Work] [contributes to realizing benefits for][is in the interests of] humankind as a whole [in accordance with decisions of the Council and Assembly]] including in ensuring the fair and equitable sharing of benefits] [and ensuring the effective protection of the marine environment], and may not recommend approval of a Plan of Work that does not comply with these requirements

~~4.~~(b) Any further relevant information about the applicant or in respect of the application sought by the Commission or the Secretary-General or supplied by the Sponsoring State(s), Members of the Authority, international organizations, adjacent coastal States, and other States or stakeholders prior to, and during the period of, the Commission's evaluation.

- (b) bis. Reports from the Finance Committee upon matters within its competence, including:

(i) assessment of the economic benefits to be derived from the activities proposed in the application;

(ii) advice as to securing optimum revenue for the Authority;

(iii) the administrative budget required to manage a contract if awarded, and the proposed annual reporting fee to be levied pursuant to regulation 84;

(iv) any recommendation regarding the amount or format of the environmental performance guarantee; and

(v) advice as to whether the applicant would be subsidized so as to be given an artificial competitive advantage with respect to land-based miners.

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

Title: We support the proposal to rename DR 12. Another alternative could be “Scope of the Commission’s consideration of applications”.

Para 2: We do not believe there should be a time limit by which the LTC should complete its evaluation and submit a report to the Council. We are concerned that a time limit would not allow flexibility in case of unanticipated intervening events (e.g. the receipt of two or more applications simultaneously) or likely complexities (especially at the first application) We are therefore supportive of the addition of ‘endeavour to’ between ‘shall’ and ‘submit its report’ which would make clear that any timeline set is indicative. If that is done, then the proposed 2(bis) can be deleted.

If a time limit is imposed, we prefer the 275 day indicative timeline – which would roughly equate to the time period between the start of the Commission’s July and March meeting. We also agree with delegations who have made the point that if the Commission requires further information from an applicant, the time period would be paused and will restart when the Commission receives the further information.

Para 3: We prefer 3 alt over para 3 for its more comprehensive reference to the relevant principles that should apply to the LTC’s review. But generally wonder if this para might be better placed in DR 13 since it provides criteria for evaluation of the application. We strongly support the inclusion at the end of both paras the important stipulation that the LTC may not recommend approval of a plan of work.

We note the reference in DR12(3) and 3alt to the LTC applying the rules in a uniform and non-discriminatory manner. It is our understanding that all Parts of these Regulations should be applied in a uniform and non-discriminatory manner. We note that there is proposed language currently in DR1 to state that ‘These regulations shall be applied in a uniform and non-discriminatory manner.’ So this part of DR12(3) can be deleted, to avoid repetition.

Para 4: We support new sub-paragraphs b and bis in place of sub-paragraphs (a bis.), (a ter.), (a quat.), and (b) to simplify drafting and clarify the obligation.. The LTC should have access to, and make its decision based on, all information that is relevant to the evaluation of an application. These also include information on an applicant supplied by any relevant party as envisaged in para (b) or reports from the Finance Committee which might have a direct bearing on the qualifications of an applicant.

We support sub-paragraph (b)(bis)(v) that requires Finance Committee advice on potential for subsidisation that may give artificial competitive advantage to land-based miners, in line with Annex III,

paragraph 13 of UNCLOS. We wonder whether the Finance Committee should also consider here Section 6 of the Annex to the 1994 Agreement. This section of the Implementation Agreement provides that there shall be no subsidization of activities in the Area except as may be permitted under the agreements of the World Trade Organisation. That aspect of subsidisation does not seem to be addressed in the Regulations currently. We confess we also do not have a clear picture how WTO agreements, and subsidy issues, apply or will apply to exploitation in the Area in practice, given the focus on imports and exports. Though we are keen to see the ISA legislate to avoid harmful subsidies. So we would like to hear more about this from relevant ISA organs, and to see a thoughtful approach to this issue embodied in the Regulations.