

**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.jm](mailto: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 13

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 (e) The applicant maintains an acceptable debt-to-equity ratio;

2 (f) The terms of any loans used by the applicant to finance the proposed Exploitation adhere to Equator Principles, the performance standards of the International Financial Corporation or equivalent.

3 (a) Certification to operate under internationally recognised quality control and management standards;

4 (a) Is technically achievable and ~~economically~~ commercially viable;

~~(b) Reflects the economic life of the project;~~

~~(vi alt 2. or ter.) The activities proposed under the Plan of Work will meet the overarching environmental goal of sustaining marine (benthic and pelagic) ecosystem integrity including the physical, chemical, geological and biological environment, and contributing to restoring ecosystem integrity, as well as the following environmental objectives:~~

~~(A) Prevent loss of genetic diversity, species richness, habitat or community types, and structural complexity on a long-term basis;~~

~~(B) Maintain the ability of populations to replace themselves, including ensuring population connectivity and the preservation of suitable habitat;~~

~~(C) Prevent the degradation of ecosystem functions (e.g. the long-term natural productivity of habitats, elemental cycling, trophic relationships);~~

~~(D) Protect ecosystems from contamination by pollutants generated during any phase of the mining process;~~

(E) Maintain resilience to prevent regime shift, and to support recovery from cumulative impacts, including mining, that can affect source populations and communities, connectivity corridors, life-history patterns and species distributions; and

(F) Sustain ecosystem services, including carbon sequestration, recognizing that many are yet to be discovered.

5 (k) Whether performance of the Plan of Work can be effectively monitored and controlled by the Authority, to minimise Environmental Effects, and ensure compliance with the Rules of the Authority.

5 bis. The Commission shall determine whether the draft plan of work and the accompanying plans and information demonstrate that the proposed activities will not interfere with any cultural rights or interests.

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

**Para 2:** We support the edits in para (c) on the demonstration of the purchase of insurance, and a reference to DR 36. We also support para (d) in relation to the Environmental Performance Guarantee, which is in line with DR 26. We would like to propose two more paragraphs in relation to financial capability criteria here. The Regulations allow a Contractor to fund its activities via loans, and to mortgage or otherwise use its exploitation contract in order to raise money, but are silent as to any restriction on debt-to-equity ratio of a Contractor, or the type of lender who the ISA would approve. We suggest these should be included as explicit assessment criteria.

So we propose the two new sub-paragraphs e which would address an applicant's debt-to-equity ratio, which is a useful indicator of solvency and risk that will assist the ISA in its assessment of financial capabilities. We also propose a new sub-paragraph (f) to ensure any loan is backed by international standards pertaining to environmental, social, and governance matters, which will add a helpful extra layer of scrutiny and regulation to the ISA's own, via the lender.

**Regarding para 3:** If this paragraph (3)(a) pertaining to certification standards is to be included as an assessment criterion, then there should be an accompanying requirement in the Regulations for a Contractor to hold such certifications. We are not sure if DR30 relating to class designation for the vessel would cover this, or whether something else is meant by 'quality control and management standards'. The term is quite vague, so it might benefit from more description of what is envisioned to ensure enforceability - or perhaps further fleshing out by way of standards and guidelines.

**As a general comment on subpara c,** if this paragraph (3)(a) pertaining to certification standards is to be included as an assessment criterion, then there should be an accompanying requirement in the Regulations for a Contractor to hold such certifications. We are not sure if DR30 relating to class designation for the vessel would cover this, or whether something else is meant by 'quality control and management standards'. The term is quite vague, so it might benefit from more description of what is envisioned to ensure enforceability - or perhaps further fleshing out by way of standards and guidelines.

Lastly, we support the addition of these two sub-paragraphs (f) and (g) pertaining to the safety management systems and the EMS, both of which are required elsewhere in the Regulations. Without adding these to the LTC's assessment criteria listed here in DR13, then it is unclear how adequacy of these required systems can be taken into account within the approval process for the Plan of Work. And an applicant could even potentially obtain an exploitation contract without any safety management system or EMS. This is why it needs to be included, in order to be appropriate comprehensive; and in our view the adequacy of these systems should be an important aspect of the LTC's evaluation.

**Para 4:** We agree with these deletions of sub-paragraphs (a) and (b). Both because the matter is already covered in paragraph (1)(f) to this DR13 so need not be repeated (if that is retained), and also because these aspects are referenced in UNCLOS specifically in relation to the ISA setting rules for the duration of an exploitation contract term. They were not intended to be criteria to take into account with regards to whether or not a contract is awarded at all.-We appreciate that UNCLOS does use the phrase ‘the economic life of the mining project, taking into consideration such factors as [...] commercial viability.’ But this is in assessing how long an exploitation contract term should be, not in assessing whether or not an applicant qualifies to be awarded a contract. To us, it is not clear what ‘commercial viability’ means as an evaluation criterion for a plan of work, nor how the LTC can make such an assessment. It is presumably for the applicant themselves to determine whether a mining project is viable from their perspective. If an applicant wishes to mine at a loss, for their own reasons, should that application automatically be denied as ‘not commercially viable’? That seems an important policy discussion for the Council to have, to ensure this point is agreed. As perhaps there are different perspectives here. We had understood there may be interest in State funded exploitation in the interests of strategic metal sourcing, rather than aiming for commercial profits. It would be good to know if Council, deems this inappropriate, or acceptable. That discussion could also consider what subsidisation is considered appropriate and what isn't, in line with relevant UNCLOS prohibitions on subsidies.

**Para vi ter:** In relation to new proposed vi ter, we greatly appreciate the incorporation of overarching environmental goals and objectives for the ISA into the Mining Code, which should be a key guiding element for the LTC in its assessment of applications. These objectives proposed seem to mirror agreed language and commitments from the Convention and other treaties, including the BBNJ agreement, and could therefore be easily integrated into this text.

**Para 5 (k) and 5 (bis):** In subpara (k), We support this new requirement for the LTC to assess whether the performance of the Plan of Work can be effectively monitored and controlled by the ISA to ensure compliance with the Rules of the Authority. It is important that the ISA should ascertain it has the capacity to carry out its mandated role to control exploitation activities [in accordance with UNCLOS Article 153], before allowing them to commence. We also welcome new para 5 bis, the inclusion here of cultural rights and interests, and note that this commitment is also included in the recent BBNJ agreement.