

**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 15

Red text is in original draft; **magenta text** indicates Pew's new textual proposals or support for a proposal from a range of options

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 not recommend approval of a proposed Plan of Work if:

(a) the Plan of Work does not comply with all requirements stipulated in Regulation 13;

2 bis. The Commission shall not recommend approval of a proposed Plan of Work if the applicant, its controlling shareholder or shareholders or its predecessor in law previously violated the general obligations of contractors in a non-negligible way.

4. If the Commission determines that **it will not recommend approval of the Plan of Work [alt 1. for any reason][alt 2. pursuant to paragraphs (1)-(3)]** ~~the applicant does not meet the [criteria][requirements] set out in [regulations 12, 13 and 14][the regulations, the Commission shall so inform the applicant in writing, by providing the reasons why any [criterion has]~~ **[any requirements set out in regulation 13 have not been met by the applicant or why the Commission has been unable to make a determination, and shall provide the applicant with a further opportunity to make representations within 90 Days of the date of notification to the applicant. During this period the Commission shall not make a recommendation to the Council on the application.**

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

Para 2 (a): The determinations and assessments made by the LTC in DR 13 in its entirety should be the basis of its recommendation here. Therefore, compliance with DR 13 in its full should be the criteria for the LTC's decision to approve or disapprove a plan of work. For this reason we do not agree with (a) alts

2, 3 and 4 which only consider the environmental impacts of the application. Obviously this is a hugely important part of the application, and we agree that failure to demonstrate the appropriate ability to ensure effective protection of the marine environment, should lead to an application rejection. However it is not the only criterion. What is the purpose of carefully setting out the range of criteria in DR13, if they are not directly related to the approval or refusal of the application? So we strongly support either 2 (a) or (2) (a) (alt), and we prefer the latter - (2)(a)(alt) as it is correct that not being able to determine that criteria are met should be treated as those criteria not having been met. This is an appropriate approach, which errs on the side of precaution.

Para 2bis: We generally support the intent behind this proposal and support its retention. We would however flag that this criterion seems to relate to DR13(1)(d) - in which case the wording could be better aligned - for example, this refers to contractor or shareholders, but DR13(1)(d) also included in its scope other key personnel who manage the contractor. We also note that if DR15(1)(a) includes all DR13 criteria in its scope, then we need not include specific points that duplicate this - so if DR13(1)(d) and DR15(1)(a) or (a alt) are both retained, this 2 bis can be deleted as it's covered already elsewhere.

General comment on para 3: We support sub-paragraphs (a), (b) and (c). (a) and (c) relate to monopolisation. For this reason, these two sub-paragraphs could perhaps be merged - whether by Standards and Guidelines as indicated in sub-paragraph (a), or by a new insertion of a defined term in the Schedule to the Regulations. We note there is suggested text in this regard, in the OEWG's facilitator text (which refers to 75% of the ore extracted from the Area at any time). We are open to this definition, though would like first to understand more about the rationale behind it. This seems like an important policy point, and we think it may be a subject upon which Council could request a considered and expert recommendation from the LTC.

Para 4: There are additional reasons and criteria why the LTC may decide not to recommend approval, including those contained within this DR 15. So we prefer the alt 1 wording contained in paragraph (4)