

**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:**

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 18bis

\*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.**

1 quin. Contractors shall throughout the term of their contract, for the purposes of Exploitation and ancillary activities, only use vessels flagged to registries of States that are member States of the Authority; and only use ports located in States that are member States of the Authority.

2. Contractors, their holding, subsidiar~~iesy~~<sup>iesy</sup>, affiliated and Ultimate Parent companies, agencies and partnerships shall be held liable for the compliance of the Contract. Particularly, they shall be jointly and severally [and strictly] liable for the obligation of compensating damages arising outside of permitted Exploitation Activities [or for unforeseen damage arising from permitted activities].

3. In the event that Contractors fail to comply with their payment obligations under these Regulations, holdings and Ultimate Parent Companies shall be held responsible to effect such payments to the Authority on behalf of Contractors.

4. [~~Sponsor States shall take all legislative and administrative measures to assure that Contractors have all material, operative, and financial means to comply with the Contract and these Regulations and that no corporate limitation shall prevent Contractors, holding and Ultimate Parent Companies to compensate damages and make the payment required by the Contractors under the Contract and these Regulations.~~]

DR 18 ter

Para 2: Any ~~suspension or~~ termination of a contract by the Authority shall be by written notice to the

Contractor, through the Secretary-General, which shall include a statement of the reasons for taking such action. The ~~suspension or~~ termination shall be effective 60 Days after such written notice, unless the Contractor within such period disputes the Authority's right to ~~suspend or~~ terminate the contract in accordance with Part XI, Section 5, of the Convention, in which case the contract shall only be ~~suspended or~~ terminated in accordance with a final binding decision in accordance with Part XI, Section 5, of the Convention.

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

**Para 1quin:** We would like to recommend a new 1 quin. which will require Contractors only to use vessels flagged to registries of ISA member States, and only to use ports in countries that are member States of the ISA as well, for the purposes of their Exploitation and associated activities. We consider this essential to ensure a comprehensive inspection and enforcement regime, whereby ISA can rely upon (and require) the cooperation and support of States where domestic investigation or enforcement may be required.

**Paras 2 and 3:** We support paragraphs 2 and 3 (and the suggested amendments) which seek to place obligations on parties related to the contractor given that there is a well-established history of indirect beneficial ownership arrangements being set up specifically so individuals who are reaping the benefits, shield themselves from the liability. However, we would welcome Council deliberation as to whether 18bis achieves the aim on its own, or whether additional measures may be required. We are of the opinion that additional measures are required and that these could include requiring the Contractor to declare all affiliated parties in their application, and having those parties also sign the ISA contract, or a side agreement acknowledging their liability obligations.

We believe the following questions would also benefit from further discussion, as from our perspective they remain largely unaddressed in these Regulations:

- Who can make a claim for compensation?
- What types of loss can be claimed?
- How will damages be assessed and quantified?
- What standard of liability will Contractors be held to in the event of environmental harm - strict liability, or will evidence of malfeasance or negligence be required to recover damages from the Contractor?
- What aspects of the liability regime will be covered by national regimes and court procedures?
- In what circumstances is the Environmental Compensation Fund to be used?
- Does the ISA's interpretation of the requirement for 'effective control' between sponsoring State and Contractor support the envisaged liability regime?

We do note some new proposed text in Annex X (on contract terms) which does provide some useful progress in addressing these questions. We would urge that these points, however, would be better placed in the Regulations than in the contract. The rules of 'privity of contract' generally prevent a person who is not a party to a contract from enforcing a term of that contract. As such, including important legal principles in the contract, rather than in the regulations, acts as a barrier to third-party claimants.

**Para 4:** Lastly, we are fine with paragraph 4 being moved to a different regulation, but we do not support its wholesale deletion. This is an important provision that clarifies at the international level what is expected from Sponsoring States and is consistent with UNCLOS Annex III Art 4, which states: "The criteria and procedures for implementation of the sponsorship requirements shall be set forth in the rules,

regulations and procedures of the Authority.' It is worth noting here as well that this provision was a recommendation by the ISA Liability working group to provide more leadership from the ISA in terms of delivery of sponsoring State responsibilities and to avoid inconsistencies across sponsoring States. Along these lines, The Council may find it helpful to reengage that liability working group to evaluate the draft regulations against the numerous recommendations it made and report on remaining liability gaps in the draft regulations.

<https://www.cigionline.org/publications/sponsoring-state-approaches-liability-regimes-environmental-damage-caused-seabed/>.

**DR 18ter:** As a general comment, we support the addition of DR 18ter that collates all potential circumstances for termination (with referencing to appropriate regulations). There may be a need to review this list at a later date and ensure that it captures all relevant circumstances. For example, there is a new suggestion in the Payment Regime text that a contract should be automatically terminated in the event that a contractor were to transfer ownership of the contract without prior permission from the ISA in accordance with regulation 23. This may need to be added.

We also suggest that reference to suspensions be removed from this DR 18 ter paragraph (2). There are a number of different circumstances in which suspensions are envisaged under the Regulations, and not all of these can function with a 60 day prior notification period. We instead propose a new regulation that will cover the process for suspensions, which can ensure consistency across the different suspensions covered in the regulations currently and will include this as part of our written submissions. If this is accepted, then 18 ter (2) should cover termination only.

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