

**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.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 24

*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 Alt. [For the purposes of this regulation, a "change in control" occurs where there is a change resulting in **different** ownership of 50 percent or more of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, or a change resulting in **different** ownership of 50 percent or more of the entity providing an Environmental Performance Guarantee.]

2. Where there [~~is a~~**may be a**] change of control ~~of the Contractor, or there is a change of control in any entity providing an Environmental Performance Guarantee on behalf of a Contractor,~~ the Contractor shall, as soon as reasonably practicable but [~~no later than 24 hours~~], notify the Secretary-General and the Sponsoring State [in advance] of such change of control, [~~but in any event within 90 Days thereafter and in the case of an entity providing an Environmental Performance Guarantee, no later than within 90 Days thereafter~~]. The Contractor shall provide the Secretary-General and the Sponsoring State with such details as he or she shall reasonably request of the change of control [including whether or not the change of control affects the Contractor's nationality or State of effective control., [~~for the purposes of determining the Sponsoring State.~~] [On receipt of such notification and any further details pursuant to this paragraph, the Secretary-General shall promptly notify the Commission and the Council.]

3. After consulting the Contractor ~~and conducting any other due diligence procedures that are relevant to the contractor's qualification criteria or entity providing the Environmental Performance Guarantee, as the case may be,~~ the Commission shall ~~Secretary General~~ **may**:

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

As a general comment for this regulation , it seems that the notification by the Contractor comes before the change of control in para 2, and the assessment occurs after the change of control has occurred in para 3, with no clear timeline by which the ISA must make a decision on whether the new ownership arrangement will be able to fulfill the contract obligations. We question whether such an assessment should occur before the change of control occurs, or whether the regulations should be worked up to better distinguish the differences between various types of change of control that can or cannot be notified in advance. For example, in other jurisdictions, such as the UK and EU, certain types of change of control require the person who is about to acquire control to notify the regulator in advance as soon as they have decided to make the acquisition and then the company itself would notify the regulator after the event. The regulator then has 60 days (with the ability to 'stop the clock' if further information is needed) to confirm the change of control. There are then other types of change of control that do not require advance approval, recognizing that prior notification with sufficient time to conduct due diligence would not be possible. As such, we believe further discussion on this regulation is warranted.

Para 1 alt: Paragraph Alt 1 is still unclear to us, as it doesn't say who the ownership belongs to. We wonder if the insertion of 'different' before ownership provides sufficiently clarity.

Para 2: Regarding paragraph 2, we note the facilitators comment, but reaffirm that this review should be done by the Commission, as a change of control is not merely an administrative matter. A change of control may result in a new entity owning or performing the exploitation contract. The ISA is required by UNCLOS to ascertain that a contractor meets the relevant qualification criteria. This will require a substantive check into the nature of the new ownership, as per paragraphs (3) and (4). The LTC is the appropriate organ of the ISA to do this, as it was also the appropriate organ to review the original contractor's technical and financial competence (not the Secretary-General). We also query the ability of the ISA to conduct appropriate due diligence and make an informed decision in less than 24 hours.

Para 3: For paragraph 3 it is not clear to us that the Commission would be able to consult with the entity that is providing the Environmental Performance Guarantee as such we recommend this chapeau read: 'After consulting the Contractor and conducting any other due diligence procedures that are relevant to the contractor's qualification criteria the Commission shall:'