

**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 57

**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 alt. If a Contractor wishes to modify a Plan of Work, it shall notify the Secretary-General. The Secretary-General shall [inform the Council and] transfer the [alt 1. request][alt 2. modified Plan of Work] to the Commission, to consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the [applicable] Standards. If the Commission considers that the proposed modification constitutes a Material Change, the Contractor [may submit an appropriate recommendation to the Council] ~~shall seek the prior approval of the Council~~ bBased on this recommendation of the Commission, under regulations 12 and 16, [the Council may give its prior approval] ~~and~~ before such Material Change is implemented by the Contractor. The sponsoring State shall also be informed.

[3 alt 1. Where the proposed modification under paragraph 2 is determined to constitute a Material Change, the Council, based on the recommendations of the Commission, shall determine whether the Contractor is required to undertake an environmental impact assessment and prepare an environmental impact statement of the proposed modification in accordance with Regulations [46bis] and [47], respectively. The Environmental Impact Statement, and any revisions to the Environmental Management and Monitoring Plan or Closure Plan, shall be dealt with in accordance with the procedure set out in regulation 11, prior to any consideration of the modification by the Commission.]

4. Notwithstanding Paragraph 2, ~~the Secretary-General may propose to~~ and the Contractor may agree to a change to the Plan of Work that is not a Material Change in accordance with the relevant Standards, to correct minor omissions, errors or other such defects. ~~After consulting the Contractor, the Secretary-General may make the change to the Plan of Work, and the Contractor shall implement such change.~~ The Secretary-General shall so inform the Commission and the Council at ~~its~~ their next meeting. The Council may decide to apply the procedure as provided in paragraph (2).

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

**Para 2:** We support the alternative language proposed here. Several Member States' submissions in November 2018 called for further clarity as to what constitutes a "Material Change", and voiced concerns over the role of the Secretary-General in making that determination. The addition of Standards would set firm parameters for what comprises a 'material change'.

Also, introducing a role for the LTC in assessing whether a proposed modification to the Plan of Work is a 'material change' appears sensible to assuage concerns raised by stakeholders about inappropriate delegation of discretionary decision-making powers to the Secretary-General of the ISA.

As for the edits to 2alt, we support alt 1 in the second sentence to say "request" instead of "modified POW". In the third sentence, we would retain the deleted text so the sentence would read – "If the Commission considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission under regulations 12 and 16, and before such Material Change is implemented by the Contractor."

**Para 3:** We prefer para 3alt 1. The draft Regulations presently do not contain any screening provisions (i.e. the assessment of which types of activities trigger an EIA requirement and which can be performed without an EIA). Presumably the determination of a material change would be one instance where screening should occur, as proposed changes could result in different Environmental Effects that may be of some significance. As currently drafted, paragraph (3) allows changes to an EMMP that was originally based on a specific EIA and EIS, without giving the ISA power to require further EIA/EIS. This seems problematic.

In addition to the revised language proposed above we recommend including a screening provision before, or within, regulation 46bis (we can provide textual suggestions if that would be helpful).

**Para 4:** We would prefer the original text with the new amendments. This permits minor changes to be made, while limiting the discretion of the Secretary-General by requiring any changes to be in accordance with the relevant Standard and to keep the Commission and Council aware of such proposals should they disagree. It also gives the Contractor the right to agree to the amendments, which seems in keeping with Article 19, Annex III to UNCLOS.