

**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 7

**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.**

3. bis. An application shall contain sufficient information to demonstrate that the applicant has **or will have** access to the necessary financial and technical capability and resources to carry out the proposed Plan of Work, and shall be accompanied by the following:

(g) A Training Plan in fulfilment of article 15 of annex III to the Convention, prepared in accordance **[annex VI bis. to these Regulations and]** with the Guidelines;

**4 (ii) a decision can be taken by the Council in relation to one Mining Area at this time, with subsequent decisions for further Mining Areas being deferred to a later time upon the submission of further documentation.**

**5. Where a single set of documents is submitted by the applicant proposing a Plan of work for two or more non-contiguous Mining Areas and the Commission considers it is not appropriate, the Commission shall reject the application and request separate documents under paragraphs 3 (b), (d), (h) (i) and (l) for each Mining Area.**

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

Regarding para 3 bis, We are interested in the proposal to add ‘or will have’ into paragraph 3 bis, which would make the applicant’s financial and technical capability tests hypothetical at the time of application, rather than a review of the applicant’s current situation. We note that this proposal for the regulations has come from a joint submission made by private sector contractors. We do not believe this proposal is in keeping with UNCLOS which speaks of the relevant qualification criteria being about the applicant’s capabilities, not their ability to acquire them in the future. It is also a departure from the Exploration

Regulations, which require the LTC to examine the financial and technical capabilities that the applicant possesses at the time of application. So we suggest to delete this proposal and would urge exploration contractors not to apply for an exploitation contract in the Area unless and until they genuinely have the financial and technical capabilities to deliver on their promises. An application for an exploitation contract from the ISA should not be treated by private sector as a fundraising opportunity, and the regulations should reflect this appropriately.

In para 3 (g), we propose adding a reference to an Annex VIbis. we note that the draft Regulations (and draft Standards and Guidelines under development) do not provide guidance on the required content of the Training Plan. This should be addressed, ideally via an annex VIbis, to place the Training Plan on the same footing as the other plans. The current lack of coverage of Training Plans may give the impression that the ISA does not prioritise it as an important part of the Contract. As observed by the Africa Group in a 2019 submission to Assembly, under UNCLOS, ‘training is envisioned as a key non-monetary benefit resulting from the implementation of part XI and as a means to introduce a degree of equity within the regime of the ISA for developing States, by sharing knowledge and building capacity’ and the Contractor’s programme of training is a specific requirement of Annex III to UNCLOS. There is an opportunity here for Council to emphasise the importance of the training programme to be provided by contractors, and to take a lead to steer it in the direction that ISA member States, and particularly developing countries, would like to see. This opportunity is missed, if the regulations are just silent on the required content of the training plan.

We agree with the way paragraph (4) sets the default position for non-contiguous areas as requiring multiple environmental plans, not single. We wondered whether it would make sense to add another option here, whereby the Council could take a decision in relation to one Mining Area, and the Contractor could submit specific documents relating to other Mining Areas at a later date for a separate later decision.

This would seem sensible to us, if there are different mining projects within the same contract area (e.g. different sites, or different methodologies), at different times mid-way through the contract term. Wording could be added here to enable such a graduated approach, which may prove more in keeping with the precautionary approach and adaptive management. Source: Fifth Report of the Code Project - Part 2 (Pew, 2019)

We support the retention of this para (5) which clarifies and logically follows the decision making process in para 4. If this paragraph (5) is deleted, it would leave a question hanging about what happens where an applicant inappropriately submits an application without the separate documentation required.