

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29TH SESSION:
COUNCIL - PART II**

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(s) of Delegation(s) making the proposal:

The Pew Charitable Trusts

2. Please indicate the relevant provision to which the textual proposal refers.

Draft regulation 13 – support 13alt

3. 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.

Regulation 13 Alt.

Assessment of applicants and application

1. In assessing both the applicant and the application, the Commission shall take into account all information pursuant to Regulation 12(4) and all applicable Standards and Guidelines and the relevant Regional Environmental Management Plan when making its determinations under this Regulation.

(...)

3. In considering the financial capability of an applicant, the Commission shall determine, in accordance with Standards and taking into consideration Guidelines, whether:

- (a) The Financing Plan is compatible with proposed Exploitation activities;
- (b) The applicant is capable of committing [or raising] sufficient financial resources to cover the estimated costs of the proposed Exploitation activities as set out in the proposed Plan of Work, and all other associated costs of complying with the terms of any Exploitation Contract, including:
 - (i) The payment of any applicable fees and other financial payments and charges in accordance with these Regulations in order to ensure that the project will benefit humankind as a whole;
 - (ii) The estimated costs of implementing the Environmental Management and Monitoring Plan and the Closure Plan; and
 - (iii) Sufficient financial resources for the prompt execution and implementation of the Emergency Response and Contingency Plan, and effective response to an Incident;
- (c) The applicant demonstrates that it will purchase insurance products that are appropriate to the financing of exposure to risk in accordance with Regulation 36, and applicable Standards, taking into consideration Guidelines;
- (d) The applicant has proposed an Environmental Performance Guarantee whose amount and form is assessed by the Commission to be adequate, and in conformity with the requirements of Regulation 26 and the applicable Standard, and taking into consideration any Finance Committee report or Guidelines.
- [(e) The applicant maintains an acceptable debt-to-equity ratio; and]
- [(f) The terms of any loans used by the applicant to finance the proposed Exploitation adhere to [Equator Principles, the performance standards of the

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International Financial Corporation or equivalent.]]

4. In considering the technical capability of an applicant, the Commission shall determine, in accordance with Standards and taking into consideration Guidelines, whether the applicant has provided sufficient information to demonstrate it has:

- (a) Certification to operate under internationally recognised quality control and management standards;
- (b) The necessary technical and operational capability to carry out the proposed Plan of Work in accordance with Good Industry Practice and Best Environmental Practices using appropriately qualified and adequately supervised personnel;
- (c) The technology, knowledge, and procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan and the Closure Plan, and the [relevant elements of the] applicable Regional Environmental Management Plan, including the technical capability to identify and monitor key environmental parameters and ecosystem components so as to detect any adverse effects, and to modify management and operating procedures as required to meet all environmental requirements;
- (d) Established the necessary risk assessment and risk management systems to effectively implement the proposed Plan of Work in accordance with Good Industry Practice, Best Available techniques, Best Available Scientific Information, and Best Environmental Practices, and these Regulations, including the technology and procedures to meet health, safety and environmental requirements for the activities proposed in the Plan of Work;
- (e) The capability to respond effectively and promptly to Incidents, in accordance with the Emergency Response and Contingency Plan;
- (f) The capability and capacity to utilize and apply Best Available Techniques;
- (g) A safety management system that meets the requirements of Regulation 30 bis; and
- (h) An Environmental Management System that meets the requirements of Regulation 50 bis.

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

As mentioned by Chile, Costa Rica, UK, Argentina, Federated States of Micronesia, Netherlands, Italy, Ireland, Portugal, Poland, Spain, African Group, Norway, Philippines and the USA, we prefer the newly proposed 'DR13 Alt' as providing a more logical and easier-to-follow structure to DR13, with the applicant being assessed first for financial capability, technical capability, and effective control, and then the application being assessed for benefit to humankind, reasonable regard for other activities, environmental protection, and cultural interests.

We also welcome the cross-reference to new DR 44 ter in paragraph (9) and its establishment of strategic environmental goals and objectives. We support this proposal, and indeed consider it imperative in order to set a framework and a direction from Council for other instruments being developed. We would also welcome this being a standalone and overarching environmental policy, as suggested by the UK. But in the continuing absence of any such policy, we recommend DR 44 ter be retained in the regulation.

In DR13(1), we suggest inserting a reference to the relevant REMP.

We support retention in DR13 of the assessment criterion in relation to the Environmental Performance Guarantee. This is in line with DR 26, which specifically requires LTC assessment.

We would suggest carrying across to 13 Alt the wording of original 13 paragraph (2)(e) and (f) relating to examination of applicant debt. The Regulations allow a Contractor to fund its activities via loans, and to mortgage or otherwise use its Exploitation Contract to raise money. Without paragraph (e), the Regulations would be silent as to any restriction on debt-to-equity ratio of a Contractor, which is a useful indicator of solvency and risk that

will assist the ISA in its assessment of financial capabilities. Paragraph (f) allows the LTC to consider the type of lender involved in the project. This can ensure any loan is backed by international standards pertaining to environmental, social, and governance matters, which will add a helpful extra layer of scrutiny and regulation to the ISA's own, via the lender. If this level of detail is too much for the regulations it could be placed in a Standard or Guideline.

If Council accepts the proposal under DR5(3)(e), which requires that the Contractor will only use vessels and ports that comply with the stipulations of that regulation, then we believe this should be added as a criterion for the LTC to check in DR 13 also.