

**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 18bis

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.

1. Contractors shall comply with the terms and conditions of their Exploitation Contract and the rules, regulations and procedures of the Authority [as amended from time to time], in a manner consistent with the Convention and the Agreement.

Support retention of 1 quat, 2 and 3 in square brackets pending further discussion

Recommend reinserting Rules of the Authority into Schedule and replacing ‘rule, regulations, and procedures’ with this term where appropriate in this regulation and throughout the regulations.

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

We are grateful to Germany for bringing attention to the issue of liability. We consider that liability aspects of the draft Regulations need to be given significantly increased attention by the Council. In this regard, we wondered if the Council may find it helpful to re-engage its previous expert working group on liability issues, to evaluate the draft regulations against the numerous recommendations the working group made, and to report on remaining liability gaps in the draft Regulations.

On paragraph 1, like Germany we think ‘as amended from time to time’ should be retained. While this might not be the appropriate place for this insertion, recognizing similar debate for DR 107(5), we think a policy discussion on this would be warranted. It is our understanding that amendments to the regulations would apply to existing contracts, with the exception of changes to system of payments which is explicitly mentioned in UNCLOS.

We also would recommend retaining paragraphs (2) and (3) for the time being while welcoming Council deliberation as to whether these paragraphs achieve the aim of holding related companies to account, or whether additional measures may be required – recalling that those related companies are likely to be distinct legal entities not party to the contract and not directly bound by the Regulations of the ISA, as noted by the delegation of Nauru. We are of the opinion that additional measures are required and that these should include (i) requiring the Contractor to declare all affiliated parties in their application, and (ii) as Netherlands may be suggesting, having those parties also sign the ISA contract, or a side agreement with the ISA in which they acknowledge their liability obligations. We consider these provisions to be even more important should the ISA limit effective control criterion to the regulatory approach. We look forward to the Netherlands’ proposal in this regard.

On a drafting note, we wanted to highlight a change in terminology that has been made wholesale throughout the Consolidated text, which is to remove the defined term ‘Rules of the Authority’ and replace it with a non-defined

term RRP. We are concerned this may have unintended consequences that would benefit from further consideration. In particular it is now unclear whether important binding instruments such as contracts, Standards and decisions of the Council fall within this general compliance obligation of the Contractors. This should be clarified. One option to do this would be to define RRP in the Schedule to the Regulations.