

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29<sup>TH</sup> 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](mailto: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 20

**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. The maximum initial term of an Exploitation Contract is 30 years [from the commencement of Commercial Production] ~~[from execution of the contract]. [Each renewal period shall be a maximum of 5 years].~~

(...)

3. ~~The Contractor application to renew an exploitation contract shall include a revised Plan of Work in accordance with Regulation 7 as well as shall supply such documentation as may be specified in the Standards and Guidelines. If the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes according to Regulation 57, the contractor shall submit a revised Plan of Work [and a revision for all accompanying plans in accordance with Regulation 7]. [The Contractor shall conduct a consultation process on the revised Plan of Work, with all States and Stakeholders in accordance with Regulation 93 bis.]~~

(...)

5. In making its recommendations to the Council under paragraph 6 below, the Commission shall examine and assess applications in accordance with Regulation 123, against the criteria contained in Regulation 132, and take account of any report on the review of the Contractor’s activities and performance under a Plan of Work under Regulation 58, as well as any other relevant information from, inter alia, performance assessments, annual reports, and environmental reports, ~~inspection reports, compliance reports, monitoring and compliance data, third-party or whistle-blower complaints, and legal actions against the contractor.~~

6. The Commission ~~shall may~~ recommend to the Council the approval of an application to renew an Exploitation Contract, and an Exploitation Contract shall be renewed by the Council provided that:...

~~(e) The overall duration of the Exploitation Contract, including renewal periods, does not exceed [x years].~~

~~7. Each renewal period shall be a maximum of 10/15 years.~~

910. An Exploitation Contract in respect of which an application for renewal has been made shall, despite its expiry date, remain in force ~~for a maximum of [three] months after its expiry date and only under extraordinary circumstances until such time as the renewal application has been considered and its renewal has been granted or refused.~~

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

In relation to paragraph (1) of DR20, like Costa Rica and Italy we support encouragement towards shorter contract lengths where this is in alignment with the objectives of the ISA. As mentioned in our submissions on DR13 and 16, this is to avoid the maximum term being awarded every time by default, when that may not be the best way to achieve the ISA's various objectives. We agree with Australia, Costa Rica, France, UK, Germany, Spain, Italy, Chile, the African Group, Ireland, Belgium, Cuba, Portugal, and Mexico that the Contract term should run from the date of contract execution not Commercial Production.

In relation to paragraph (3), like others, we would prefer to re-insert the previous wording (no longer visible in this re-drafted text) that required a new Plan of Work for every renewal application. If the changes to a Plan of Work at the time of renewal are minimal (or even zero, as one Contractor's submission on this regulation had suggested), then the Contractor can simply submit the same Plan of Work. We do doubt, however, that the Plan of Work would remain unchanged. Also, like the UK, Spain, Chile and Ireland, we also support a consultation period on the revised Plan of Work.

Like Germany, Belgium and Denmark, we support the additions to paragraph (5). We strongly support that third-party or whistle-blower complaints are relevant to the ISA's decision-making. Indeed, we note that systems to receive such complaints are as a basic tool almost universally used by regulators to receive information that may inform its own inspection and compliance work. Yet such a mechanism does not currently exist at the ISA. DR20(5) envisions that such complaints mechanisms *will* exist, but these draft Regulations do not create the mechanisms. The Suspense Document refers to 'General whistle blowing policy of the Authority', in suggesting re-location of text from DR101bis. But such a policy does not exist. We consider it a matter of urgency that a third-party complaints procedure should be established at the ISA, alongside a whistle-blower policy for any disclosures received from persons (e.g. employed by contractors or the ISA) who may fear reprisals. We have already seen circumstances where persons employed by contractors prefer to go to the media with issues of concern they observe, rather than report concerns to the contractor or the ISA. We would like to see the Council issue a decision this session to instruct the LTC to develop such policies and procedures **now**, covering all activities in the Area, and all areas of ISA work. If that is done, then cross-reference in the Exploitation regulations to such a policy or mechanism, as in this DR20(5), will have meaning.

With regards the question between 'may' or 'shall' in paragraph (6), for us the key point here is that the Council may not want to approve a contract renewal for regional/strategic issues (outside the individual Contractor's control), such as unacceptable cumulative impacts that may arise from the approval of multiple mining operations. Controlling numbers of simultaneous mining operations will be an important element to the ISA's application of the precautionary approach. Where UNCLOS in Annex III speaks to extensions that 'shall' be approved, this relates to exploration only. No such wording is used in UNCLOS to our knowledge in relation to exploitation. We presume this must have been intentional by the drafters of UNCLOS. Instead UNCLOS Annex III speaks to a duration of an exploitation contract allowing the ISA opportunity to amend terms and conditions over time. There is no right to obtain renewals or extensions of exploitation contracts, and the ISA should retain appropriate control over this matter. As such, like Costa Rica, Germany, Chile and Mexico we consider 'may' should be used here.

Like Germany we note that DR20 in this Consolidated Regulations text does not limit the number of Contract renewals and could allow infinite Contract extensions (and all without any new Plan of Work, if the current wording is retained). We strongly encourage Council to apply more stringent procedures than this. We have provided some new text to paragraph 6 along these lines. Though if 'may' instead of 'shall' is included in the chapeau this may not be needed.

Lastly, as was also mentioned by Germany, while we can understand the rationale of paragraph 9, we are concerned about the implications of contractors operating under a contract that has expired, such as whether the insurance will lapse during this period. Theoretically, the application may be under review for several months, possibly a year. As such, we tend to be supportive of Germany's proposal to insert a maximum period whereby a contract may remain in force despite having expired. We have inserted this language above.