

**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 23

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.

[4. An application to transfer the rights and obligations under an Exploitation Contract shall be subject to the requirements under Regulations 5-16].

(...)

8. A transfer is validly effected only upon:

(a) Execution of the assignment and novation agreement between the Authority, the transferor and the Transferee;

(b) Payment of the prescribed transfer fee pursuant to appendix II; **and**

(c) Recording by the Secretary-General of the transfer in the Seabed Mining Register.

[**(d) Payment of the Transfer Profit Share in accordance with paragraph 7 of this Regulation and the applicable Standard.];**

(e) deposit of an Environmental Performance Guarantee as set out in regulations 26; **and**

(f) submission of ownership information to the Beneficial Ownership Registry

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Support deletion of paragraph 10

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

We note in DR23 that the new paragraph (4) is in square brackets, but the alternative (previous) paragraph (4) has not been replicated in this Consolidated Regulations draft. At least two subparagraphs should be retained to ensure appropriate evaluation of a transfer request related to occurrences *after* a contract award, e.g. ascertaining that an Environmental Performance Guarantee has been lodged, and that relevant information has been submitted to the Beneficial Ownership Registry. This language could be added to paragraph 8.

DR23 describes the process if a transfer is recommended by the LTC and approved by the Council. But DR23 omits the converse process, for where a transfer is not recommended or approved. We consider this omission problematic.

We support the deletion of paragraph (10), which sought to provide for the terms and conditions of a new contract for the transferee. We consider deletion appropriate because a transfer under DR23 does not create a new contract. It is clear from paragraph (9) that it is an assignment and a novation. A novation agreement enables all the rights and obligations of one contract to be passed to the transferee, i.e. the original contract is duplicated, without

amendment (save for the parties' names). So paragraph 10 should remain deleted to avoid the implication that a transfer triggers a new contract.