

**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 7

**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)(c) prepared in accordance with these Regulations and the applicable Standards, the relevant Regional Environmental Management Plan and taking ~~into consideration account of~~ Guidelines

Reinsert old (2)(d) - ~~(d) Comply with the national laws, regulations and administrative measures of the sponsoring State or States made pursuant to articles 139 and 153(4) of the Convention and article 4(4) of annex III to the Convention.~~

Support new (2)(d) --~~(d) Provide the Authority with written undertakings from parent or holding companies of the applicant, if any, to assume joint and several liability for damages to the Authority in the event of liability having been established against the applicant in carrying out of the plan of work.~~

~~3. An application shall be prepared taking into account these Regulations, the applicable Standards and Guidelines, as well as the respective Regional Environmental Management Plans.~~

3. bis. An application shall contain sufficient information to demonstrate that the applicant has ~~for 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 with the ~~Guidelines~~Annex XX to these Regulations [Standard];

Support changes to (4) and insertion of (5)

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

Paragraph (1)(c) and (3) are duplicative. We recommend deleting 3 and inserting a reference to REMPs in (1)(c).

We do not support the deletion of the old 2(d), which had required an undertaking from each contractor that they would comply with their sponsoring State’s laws and national measures. If any contractor is not prepared to comply with relevant national rules, it would render the overall legal framework full of holes. There is also an added value to ISA of making old 2(d) a condition of the ISA’s contract. It would give the ISA power to take

regulatory action in the event of breach of national laws (and not only in the event of breach if ISA rules). If compliance of national law is not a condition of the contract, then the ISA may be aware or notified that a contractor is breaching national law, but may be prevented from taking any regulatory action itself on that basis.

We support the insertion of the new (2)(d), and support Australia's proposal that a thematic discussion on liability of parent company and how to reflect across the regulations is needed.

In paragraph (3)(bis), like Germany, India, Italy, Norway, UK, Jamaica, Poland, Cuba, Netherlands and the African Group, we also do not support the proposed addition of 'or will have' regarding necessary financial and technical capability. We do not believe this proposal is in keeping with UNCLOS which describes relevant qualification criteria as 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 we would also delete the words 'access to'.

Paragraph (3)(bis)(g) refers to the Training Plan. Unlike every other plan required from contractors, the draft Regulations gives no guidance as to the content of the Training Plan. This should be addressed, ideally via a new Annex, to place the Training Plan on the same footing as the other plans. 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.

Like Spain, we support the retention of sub-paragraph (3)(bis)(k), whereby applicants are required to supply copies of relevant policies pertaining to how they will conduct their activities, including staff Code of Conduct. It is usual practice in other regulated industries for companies to set out the expectations for all staff on matters from safety to ethical behaviour including environmental performance. These materials should be mandatory reading for employees, aimed to embed a health, safety and environmentally conscious culture at the top of the organisation through all levels. It therefore makes sense to include such matters as a requisite component of the application, and as part of the evidence base for the ISA in assessing the credentials of the applicant. Though we are flexible with this content being moved to a Standard as proposed by the UK.

We support the retention of sub-paragraph (3)(bis)(L) relating to the Environmental Performance Guarantee ('EPG'). We recall the draft Standard and Guideline on the EPG prepared for consultation in October 2020, which indicated that a number of documents pertaining to the EPG would be required from an applicant as part of the application for approval of a plan of work (e.g. an EPG Declaration, an EPG Confirmation, and a validation statement). This addition reflects those requirements.

The text added to paragraph (4) about the Council taking a decision at the outset for one Mining Area only, with allowance to consider other Mining Areas within the same contract in the future, makes sense to us. In practice there may be different mining sites within the same contract area that could be progressed at different times. We would generally support a graduated approach to the ISA's decision-making, in keeping with the precautionary approach and learning over time. We wonder whether this concept would benefit from separating into a new paragraph, for clarity – and may perhaps be better placed in DR16 which pertains to the Council's decision making on an application for Exploitation? Consideration may need to be given also whether there are other procedures that need to be established for the scenario (whereby a contractor is submitting documents for a new mining site, after already obtaining a contract for the larger Contract Area) – would this be treated as a modification of an existing Plan of Work under DR57, for example? It may be helpful to clarify this in the Regulations.

We support the retention of paragraph (5), which clarifies and logically follows the process described in paragraph 4.