



Template for the review of the draft standards and guidelines associated with the Draft regulations on exploitation of mineral resources in the Area

I. Background

1. The Draft regulations on exploitation of mineral resources in the Area ([ISBA/25/C/WP.1](#)) require that certain issues are addressed in accordance with, or taking into account, standards and guidelines to be developed by the organs of the Authority. The standards will be adopted by the Council and will be legally binding on Contractors and the Authority, whereas the guidelines will be issued by the Legal and Technical Commission or the Secretary-General and will be recommendatory in nature.
2. Stakeholders consultations are an integral part of the process decided upon by the Commission for the development of the standards and guidelines ([ISBA/25/C/19/Add.1](#)).
3. The Legal and Technical Commission will consider the comments received through the stakeholders consultation at its next session.
4. The drafts include a cover page containing substantive background and contextual information on the approach taken by the Commission in developing each standard and guidelines. Review comments are not being sought on this background information.
5. Issues of format and consistency across the standards and guidelines will be reviewed by the secretariat and Commission once the content of the various standards and guidelines is finalized following stakeholders consultations.

II. Submitting Comments

6. To ensure that your comments are given due consideration, please send them by e-mail to ola@isa.org.jm, at your earliest convenience but **no later than 20th October 2020**.
7. When submitting comments, please adhere to the following guidance as much as possible:
 - a. Please provide all comments in writing and in an MS Word .doc or .docx format using the table provided below.
 - b. The table format allows for an unlimited number of comments to be added. To add more comments, you may add more rows.

- c. Please provide full contact information for the individual/Government/organization submitting the comments.
 - d. Please avoid commenting on issues related to format, grammar, spelling or punctuation, unless it affects the overall meaning of the text, as the document will be formatted and edited when the final draft is prepared.
 - e. To facilitate the revision process please be as specific as possible in your comments. In areas where you feel additional or alternative text or information is required, please suggest what this text may look like or what information should be included.
 - f. Text may be copied from the draft into the table if stakeholders wish to use "track changes" in editing text (this is encouraged to ensure accuracy and avoid numbering errors).
 - g. If you refer to additional sources of information, please include these with your comments when possible or provide a complete reference or hyperlink.
 - h. All review comments will be posted on the ISA website, unless otherwise requested by the submitting entity.
8. Should you have any questions regarding the review process, please contact ola@isa.org.jm.

III. Template for Comments

- 9. Please use the review template below when providing comments.
- 10. Line and page numbers have been provided in the drafts. Please use these as a reference as illustrated in the table below.

TEMPLATE FOR COMMENTS

<i>Document reviewed</i>	
Title of the draft being reviewed:	'Draft standard and guidelines on the form and calculation of an Environmental Performance Guarantee' (Guidelines) for consultation with ISA members and observers
<i>Contact information</i>	
Surname:	KORBIEH
Given Name:	SOLOMON
Government (if applicable):	AFRICA GROUP
Organization (if applicable):	AFRICA GROUP
Country:	AFRICAN GROUP
E-mail:	skorbieh@yahoo.com or c6ghanaun@aol.com
<i>General Comments</i>	
<ol style="list-style-type: none"> 1. The name of the 'Environmental Performance Guarantee' should be changed to 'Decommissioning Guarantee'. The EPG is intended to cover unexpected costs that the Contractor is unable to meet for the EPG Scope (basically decommissioning and ex post mining environmental monitoring). The EPG does not cover environmental damage during mining or remediation costs from any environmental disaster. In addition, the EPG does not incentives environmental obligations during mining, nor provide access to funds for environmental harm or other emergency incidents that may occur during mining. In summary, the EPG is not broad enough in its scope to guarantee environmental performance. 2. The LTC and ISA in drafting the EPG Standards and Guidelines should not place weight on 'the EPG not hindering the ability of contractors to participate in the Area'. The principal motivation for the EPG should be guaranteeing funds for decommissioning and post-mining environmental monitoring, regardless of the impact on contractor profits. UNCLOS places legal obligations on the ISA to protect the marine environment and monitor the impact of activities in the Area, and these obligations cannot, and should not, be made subservient to financial obligations. In addition, only if DSM is economically marginal and the Contractor of weak financial standing would the costs of a letter of credit or surety bond significantly affect the commercial viability of the mine. 3. It is inappropriate for the EPG to include company/self-guarantees. DSM is a new and untested industry with potentially high environmental risk. Thus, regulatory mechanisms at the cautious end of the spectrum are preferred. There may be contractors with limited experience in mining and weak finances. Moreover, even large companies can, and do, fail. 4. If company/self-guarantees are accepted by the ISA (and the African Group would suggest that they are not accepted), then the Guidelines should outline the process, data and criteria required for a contractor to demonstrate that their finances are sound 	

enough to self-guarantee.

5. The EPG Standards and Guidelines should be amended to cover **all** EPG Scope costs a contractor cannot meet. Currently only **unexpected** EPG Scope costs are covered. This is a crucial distinction, as it may be the case, due to say bankruptcy, that a contractor cannot cover expected EPG scope costs, and in such a case, all EPG scope costs should be covered by the EPG.
6. The ISA should develop more detailed criteria against which the EPG Scope costs can be evaluated. Such criteria could be included in the EPG Standards and Guidelines or subsidiary documentation.
7. The EPG Standards and Guidelines give contractors too much scope in choosing the financial instrument underpinning the EPG. There is a strong argument that the EPG Standards and Guidelines should be more prescriptive, perhaps outlining that only letters of credit or surety bonds are acceptable. Alternatively, and this is the option the African Group leans to, a decommissioning fund should be established.
8. A decommissioning fund should be considered. Contractors would make payments into this Fund equal to the EPG Scope Costs. Payments could be made upfront or possibly over the life of the mine. However, receiving payments over the life of the mine may lead to insufficient funding being available to cover EPG Scope Costs if the mine ceases operations early. If the contractor has met its EPG Scope obligations it can be repaid from the Fund. In the alternative, where the contractor does not meet its EPG Scope obligations, the ISA may use the Fund to meet such costs. The advantages of such a Fund are: high visibility, assuaging public concerns and ensuring Funds are available for decommissioning.
9. The ISA should undertake more work to identify acceptable criteria for banks and insurance companies underwriting letters of credit and surety bonds respectively. The ISA should only accept surety bonds and letters of credit from financial institutions with sound finances and strong reputations.
10. The ISA should either have to approve the independent validator selected by the contractor, or the ISA should itself procure the independent validator.
11. There should be a commitment to the highest standards of transparency for the EPG. In order for informed decision-making by Council, and informed discussion by Assembly, all information provided by applicants in determining their EPG quantum and mode, should be shared with Council and made available to members and observers. Additionally, the LTC will need to make transparent the details of how its evaluations and recommendations were made; i.e. how each applicant fared under (as-yet unspecified) ISA assessment criteria.
12. The ISA should clarify whether the 'Standards' section of the EPG Standards and Guidelines can be, and is intended to be, legally binding given that the Draft Exploitation

