

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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 of Working Group:

President's Text

2. Name(s) of Delegation(s) making the proposal:

Federal Republic of Germany

3. Please indicate the relevant provision to which the textual proposal refers.

DR 24

Green text is in original draft; **blue text** indicates Germany's textual proposals

4. 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.

Draft Regulation 24

Change of control

1. For the purposes of this regulation, a "change in control" occurs where there is a change [in 50 per cent or more of] in the ownership of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, [that results in the holding of the beneficial ownership of 50% or more of the Contractor or the controlling interest in the Contractor by an entity that previously held a minority share or had no prior equity interest,] or a change in 50 per cent or more of the ownership of the entity providing an Environmental Performance Guarantee ~~[which by bringing the ownership to 50% constitutes a change in the effective control].~~

1.Alt. [For the purposes of this regulation, a "change in control" occurs where there is a change resulting in ownership of 50 percent or more of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, or a change resulting in ownership of 50 percent or more of the entity providing an Environmental Performance Guarantee.]

2. Where there is a change of control of the Contractor, or there is a change of control in any entity providing an Environmental Performance Guarantee on behalf of a Contractor, the Contractor shall, [as soon as reasonably practicable but no later than 24 hours], notify the Secretary-General ~~[and the Sponsoring State]~~ in advance of such change of control, ~~[but in any event within 90 Days thereafter]~~ ~~[and in the case of an entity providing an Environmental Performance Guarantee, no later than within 90 Days thereafter]~~. The Contractor shall provide the Secretary-General ~~[and the Sponsoring State]~~ with such details as he or she shall reasonably request of the change of control.

[including whether or not the change of control affects the Contractor's nationality or State of effective control, for the purposes of determining the Sponsoring State.]. On receipt of such notification and any further details pursuant to this paragraph, the Secretary-General shall promptly notify the Commission and the Council.

3. After consulting the Contractor or entity providing the Environmental Performance Guarantee, as the case may be, the ~~Secretary-General may~~ **Commission shall**:

(a) Determine ~~that whether~~, following a change of control of the Contractor or the entity providing the Environmental Performance Guarantee, the Contractor will continue to be able, ~~[and in particular will have the financial capability]~~, to meet its obligations under the exploitation contract or Environmental Performance Guarantee, in which case the contract shall continue to have full force and effect, **or**

(i) In the case of a Contractor, treat a change of control as a transfer of rights and obligations in accordance with the requirements of these regulations, in which case regulation 23 shall apply; or

(ii) In the case of an entity providing an Environmental Performance Guarantee, require the Contractor to lodge a new Environmental Performance Guarantee in accordance with regulation 26, within such time frame as the ~~Secretary-General~~ **Commission** shall stipulate.

[b) Confirm with the Sponsoring State, through the Secretary-General, whether its sponsorship continues, or require a written notice under regulation 21 bis. where sponsorship has terminated.]

(c) Provide a report on any developments pertaining to this paragraph to the Council at its next meeting.

4. Where the ~~Secretary-General~~ **Commission** determines that, following a change of control, a Contractor may not ~~[be able]~~ **[have the operational or financial capability]** to meet its obligations under its exploitation contract, the ~~Secretary-General shall inform the Commission accordingly. The~~ **Commission shall submit a report of its findings and recommendations to the Council. The Council shall consider the matter at its next meeting with a view to take a decision.**

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

- Germany would like to hear views on the distinction between paragraph 1 and 1 alt (which appears to be an abbreviated version on the former) since there may be some value in including references to beneficial ownership and controlling interests.
- We propose to delete some text that have been suggested for inclusion in paragraph 2, since we think the event with the EPG should be treated as the same.
- Moreover, with respect to paragraphs 2, 3 and 4, we are of the view that the determination on this matter should be made by the Commission and not the Secretary-General, as this is not an administrative function. Since the Commission considers these matters when an application is submitted and reports to the Council, it is only appropriate that changes in control that meets the definition under paragraph 1 should also undergo the same process. Otherwise, by circumventing the Council, the process may be open to abuse. Hence, we have made textual proposals to this end.
- Finally, there seems to be a gap in the process and we would like to invite views on what would the course of action be for the Council in the event

paragraph 4 applies (e.g. issuing a compliance notice and/or suspending and/or terminating the contract) and whether this should be specified.

- Finally, control can be achieved in other ways than through ownership. Germany reserves further comments on this matter.