

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28<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 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 26

**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.**

**Regulation 26 [Environmental Performance Guarantee] [Alt. Decommissioning Bond]**

1. A Contractor shall lodge [an Environmental Performance Guarantee] [a Decommissioning Bond] in favour of the Authority and no later than the commencement date of production in the Mining Area.

2. The required form and amount of the [Environmental Performance Guarantee] [Decommissioning Bond] shall be **assessed and recommended by the Commission and determined by the Council** according to the [applicable Standards and take account of the applicable] Guidelines, and shall reflect the [likely] [forecasted] costs required for:

(a) The premature closure of Exploitation activities;

(a) **bis.** — [~~The repair of an in-service submarine cable or pipeline in, or adjacent to, the application area that was damaged as a result of the Contractors activities;~~] ~~-(a) ter.~~ — [~~Responding to, and remediating, a significant environmental Incident;~~]

(b) The decommissioning and final closure of Exploitation activities, including the removal of any Installations and equipment; and

(c) The post-closure monitoring and management of residual Environmental Effects.

3. [~~The Council shall decide the amount of an [Environmental Performance Guarantee] [Decommissioning Bond] in the Standard taking into account the recommendation of the Commission and Finance Committee.~~] The amount of an [Environmental Performance Guarantee] [Decommissioning Bond] may be provided by way of instalments over a specified period according to the relevant [Standard and take account of the applicable] Guidelines. **In such cases, commercial production may only commence once the full amount has been provided.**

[3 bis. The [Environmental Performance Bond] [Decommissioning Bond] shall take the form of a letter of credit or surety bond guaranteed by a financial institution with a longterm credit rating of AA- or better from Fitch Ratings, Moody's or Standard & Poor and meeting the other financial criteria provided for in the Standard.]

4. The amount of the [Environmental Performance Guarantee] [Decommissioning Bond] shall be reviewed and updated ~~annually by the Contractor~~:

- (a) Where the Closure Plan is updated in accordance with these regulations; or
- (b) As the result of:
  - (i) A performance assessment under regulation 52;
  - (ii) A modification of a Plan of Work under regulation 57; or
  - (iii) A review of activities under a Plan of Work under regulation 58;

[(iv) The Authority considers that the likely cost of the activities outlined in (2) have substantially increased;] and

(c) At the time of review by the Commission of a final Closure Plan under regulation 60.

(d) [Inflation and other market or economic conditions impact on the amount of the guarantee that must be held.]

5. A Contractor shall, as a result of any review under paragraph 4 above, recalculate the amount of the [Environmental Performance Guarantee] [Decommissioning Bond] within 60 Days of a review date [and submit this calculation to the Secretary General for forwarding to the Commission for their review. The Commission shall promptly assess and make appropriate recommendations the Council, which shall determine the revised amount. Within 30 days, the Contractor shall] ~~and~~ lodge a revised guarantee in favour of the Authority.

6. The Authority shall hold such guarantee in accordance with its policies and procedures, which shall provide for:

- (a) The repayment or release of any [Environmental Performance Guarantee] [Decommissioning Bond], or part thereof, upon compliance by the Contractor of its obligations that are the subject of the [Environmental Performance Guarantee] [Decommissioning Bond]; or
- (b) The forfeiture of any [Environmental Performance Guarantee] [Decommissioning Bond], or part thereof, where the Contractor fails to comply with such obligations.

7. The requirement for an [Environmental Performance Guarantee] [Decommissioning Bond] under this regulation shall be applied in a uniform [and nondiscriminatory] manner.

8. **The lodging of an Environmental Performance Guarantee / Decommissioning Bond does not relieve the Contractor of its obligations that are the subject of this regulation. Refusal or reluctance on the part of the Contractor to fulfil such obligations shall be subject to the relevant compliance measures under these Regulations.** The provision of an [Environmental Performance Guarantee] [Decommissioning Bond] by a Contractor does not limit the responsibility and liability of the Contractor under its exploitation contract in the amount of such guarantee. **Should the Authority be compelled to make recourse to the Environmental Performance Guarantee / Decommissioning Bond due to any non-compliance by the Contractor of its obligations that are the subject of the Environmental Performance Guarantee / Decommissioning Bond, the Contractor remains liable to the Authority for any direct, incidental or additional costs incurred by the Authority.**

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

- Germany is open to the suggestion to rename the Environmental Performance Guarantee to Decommissioning Bond.
- We are of the view that the decision-making process, i.e. the roles of the Commission and the Council, should be specified and we suggest doing so in paragraph 2. We support the deletion of 2bis and 2ter.
- While we are amenable to the idea of payments by installments, this should only be allowed with the condition that commercial production can only commence after the amount due is paid in full.
- We agree with the intention behind 3bis.
- We suggest deleting the words “annually by the Contractor” in paragraph 4 since the relevant events that would require a review are captured in the subparagraphs that follow.
- We suggest some edits in paragraph 5 to clarify the applicable process.
- We propose some edits to paragraph 8, mainly to stress that the lodging of a guarantee or bond should not in any way serve as a motivation for contractors to not comply with their obligations under the contract. Rather, it would only apply in strictly limited circumstances where the contractor is not able to perform its obligations. Moreover, the contractor must be liable to the Authority for any costs incurred because of such recourse.