

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:

The Pew Charitable Trusts

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

Annex I, Annex II, Annex III

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.

10. Telephone number of applicant's designated representative.

11. Fax number of applicant's designated representative.

12. Email address of applicant's designated representative.

13. If the applicant is a juridical person:

(a) Identify applicant's place of registration;

(b) Identify applicant's principal place of business/domicile; and

(c) Attach a copy of applicant's certificate of registration.

[(d) Identify the identities and locations of the applicant's:

(i) management including any members of its board of directors;

(ii) ownership, including any persons or entities holding 5 percent or more of the applicant's equity, if different from the place of registration/domicile, for example in the case the the applicant is a subsidiary of a parent company located in a different jurisdiction and

(iii) an organisational chart of the group structure.]

13 bis. Provide any additional information to assist determine the nationality of the applicant, or by whose nationals the applicant is effectively controlled.

13 ter. Where the applicant is a company, provide an organisational chart or other description of any company group structure, including parent, subsidiary or other associated companies.

Annex II

(d) Details of the equipment, methods and technology expected to be used in carrying out the proposed Plan of Work, including the results of [full-scale mining machinery] tests conducted and the details of any tests to be conducted in the future, as well as any

other relevant information about the characteristics of such technology, including processing and environmental safeguard and monitoring systems, [and electricity or other energy supply](#), together with details of any certification from a conformity assessment body;

(j) Details on how many [and what type and nationality of](#) vessels [are proposed to] [will] be involved in the mining operations, including how and to where the collected ores [will] [are proposed to] be transported from the mining site to shore for processing, [as well as details relating to onshore processing]

Annex III

A Financing Plan should include [supported by evidence or other relevant sources](#):

(a) Details and costing of the mining technique, technology and production rates applicable to the proposed mining activities;

(b) Details and costing of the technological process applicable to the extraction and on-board processing of the Mineral ore;

(c) Details and costing of the technical skills and expertise and associated labour requirements necessary to conduct the proposed mining activities;

(d) Details and costing of regulatory requirements relevant to the proposed mining activities, including the cost of the preparation and implementation of the Environmental Management and Monitoring Plan and Closure Plan;

(e) Details regarding other relevant costing, including capital expenditure requirements;

(f) Details of [advance agreed sales, and all](#) expected revenue applicable to the proposed mining activities;

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

The defined term of ‘designated representative’ (which was changed from being a specific definition for DR93, to a general definition for all regulations in the Schedule of Terms in this President’s Text) does not appear to work in this context. A small amendment to the definition, so it relates to persons ‘so named on behalf of a Contractor on the Seabed Mining Register, or prior to award of contract, in the application’. may assist

We also suggest to add a new 13 bis and 13 ter to allow for provision of any additional information to assist determine the applicant’s nationality, and also to require an organisational chart of the group structure where the applicant is a company with parent, subsidiary or associated companies.

Determination of applicant nationality may be more complex for private sector applicants, and this has ramifications for the UNCLOS requirement of ‘effective control’ and sponsorship by the relevant sponsoring State.

In recent times, the ISA has awarded contracts for exploration to different companies sponsored by different States, which have later transpired to be subsidiaries of the same parent company. The parent company was not named in the applications. To properly assess potential monopolization or contractor dominance, the ISA needs to require information about company structure and ownership of applicants at the time of application. This should be sufficient to allow ‘piercing of the corporate veil’, to identify where parent companies may have silent involvement in more than one ISA contractor.

This is the rationale for making more specific enquiry on these points in the application process. For more on this point, please see the commentary and the proposed definition of ‘effective control’ in the Schedule to the Regulations, below.

On Annex II, para 2: We support the intention behind this proposal though recognize that it will need to be re-evaluated based on the conversations around test mining. Also we do not think the focus on full-scale mining

machinery should remove the requirement for the applicant also to include the results of other tests e.g. with smaller scale machinery, or with individual machinery components, which may be the inadvertent result of this drafting amendment? We suggest that plans for energy supply should also be included in the Mining Workplan. This may be a challenging aspect given the energy-intensivity, remoteness and operation duration involved in mining in the Area.

Regarding para (j), the type and nationality of vessels involved in the mining operations is relevant information to the ISA, as different vessel classes and different flag States will have different rules applicable. There may also be issues around compliance and coordination if the vessels' flag States are not ISA member States. The ISA should check before awarding a contract that there are no gaps in the monitoring and enforcement regime, and the more information that can be obtained with regards different States and jurisdictions that will be involved in the operations, the better.

Similarly we consider details as to onshore processing to be a relevant enquiry here. Although oversight on onland processing falls outside of the ISA's jurisdiction, it may be legitimate for the ISA to gather information about potential environmental impacts from onland processing and/or about the jurisdiction in which the minerals will be refined and sold, as potentially relevant factors for assessing that the exploitation will be in the overall interests of humankind.

Minor amendments in Annex III to include not only details, but also evidence to support the details that are asserted.