

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.

DR 24

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.

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].~~

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.]~~ ~~The Secretary-General shall pass this information to the Commission for consideration.~~

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

4. Where the ~~Commission Secretary-General~~ determines that, following a change of control, a Contractor may not ~~[be able]~~ ~~[have the 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.

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

In para 1, as mentioned by other member States, a change in control can occur with any change in ownership e.g. if one party owns 49.9%, a change of control could take place if that party acquires a further 0.2% ownership. As such we recommend that 'in 50 per cent or more of' be deleted.

On para 2, we note the facilitators comment, but this review should be done by the Commission. As a change of control may result in a new entity owning or performing the exploitation contract, the considerable discretionary

power bestowed upon by the Secretary-General in this DR24 would be better reserved for the LTC. The LTC is the organ of the ISA that reviewed the original contractor's technical and financial competence (not the Secretary-General).

Lastly, we agree with the suggestion regarding monopolization. According to Annex III of UNCLOS, a Plan of Work should not be awarded by the ISA where to do so would permit a State Party or entities sponsored by it to monopolize the conduct of activities in the Area or to preclude other States Parties from activities in the Area. This obligation would have little meaning if a monopoly was permitted to arise after the award of the Plan of Work, by means of take-overs of those contracts, without check.