

**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 25

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.

~~2. Where, as part of a revised Plan of Work, the Contractor delivers a revised Environmental Impact Statement, Environmental Management and Monitoring Plan and Closure Plan under paragraph 1 above, regulation 57 (2) shall apply mutatis mutandis to such Environmental Plans [if the modification to the Environmental Plans constitutes a Material Change], and such Environmental Plans shall be dealt with in accordance with the procedure set out in regulation 11.~~

2alt. Regulation 57 shall apply to a revised Plan of Work submitted by the Contractor under paragraph 1.

3. ~~Provided that, [where applicable], the procedure under regulation 11 has been completed,~~ the Commission shall, at its next meeting, provided that ~~the procedure under regulation 11 has been completed where applicable, and~~ the documentation has been circulated at least 30 Days before the meeting, examine and assess [the Feasibility Study and] any revised Plan of Work supplied by the Contractor under paragraph 1 above ~~in accordance with regulations 12 and 13 and any relevant Standard,~~ and in the light of any comments made by members of the Authority, Stakeholders and the Secretary-General ~~on the Environmental Plans.~~

4. If the Commission determines that the revised Plan of Work, including any amendments thereto dealt with in accordance with regulation ~~57~~4, continues to meet the requirements of regulations 12 and 13, it shall recommend to the Council the approval of the revised Plan of Work. [If the Commission determines that it does not meet said requirements, the procedure established in Regulation 14 (b) will be applied.]

5. The Council shall consider the report and recommendation of the Commission relating to the approval of the revised Plan of Work in accordance with paragraph 11 of section 3 of the annex to the Agreement.

6. The Contractor may not commence ~~Commercial P~~roduction in any part of the Area covered by the Plan of Work until either:

(a) The ~~Secretary-General~~ [Commission] has determined that no Material Change to the Plan of Work needs to be made in accordance with regulation 57 (2) ~~[and this determination has been endorsed by the Council];~~ or

(b) In the event that a Material Change is made, the Council has given its approval to the revised Plan of Work pursuant to paragraph 5 above; and the Authority

has confirmed lodgement by the Contractor of ~~has lodged~~ an Environmental Performance Guarantee in accordance with regulation 26.

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

We believe DR25 needs further policy discussion by Council, to ensure mutual understanding and efficacy of the regime. During meetings of the intersessional Working Group on Test-Mining, members queried what would be the requisite contents of the Feasibility Study required under draft regulation 25. It was raised that a feasibility study (in the common use of the term in the mining industry) would usually be an objective study carried out by qualified experts, used by the operator for the purposes of raising capital for a mining project. As such, a feasibility study would usually occur before commercial-scale mining equipment is built. This raises questions about the current ordering of the Regulation requirements, and/or the meaning and expected content of the 'feasibility study' for the ISA, if it means something different from common usage. We note that the term 'Feasibility Study' is defined in extremely broad (and vague) terms in the Schedule to the Regulations. We also note that the Mining Workplan (Annex II) requires a comprehensive statement of the Mineral Resource including all known details of reserves, with a report to validate this. Also an economic evaluation and financial analysis of the project, projected production rates, and details of test mining. Which sounds very much like the expected content of the Feasibility Study (and the results of the test mining study). Perhaps it should be clarified that the documents required under DR25 are designed to further validate, or to amend, what information was already submitted in the Mining Workplan?

In relation to paragraph (1) of DR25, we agree with the facilitator that the review of a Feasibility Study, and the decision whether or not the new information necessitates amendment to the Plan of Work, are substantive and not administrative duties and therefore seems sensible to that the LTC would conduct the review. It is unclear why the draft of DR25(1) has shifted away from relying on a Standard to set the requirements for the Feasibility Study, and relying instead only on a non-binding Guideline. We suggest the Standard is reinstated.

Regarding para 3: The Regulations should require not only an 'examination' of the revised Plan of Work, whose scope seems unclear, but more specifically an assessment against specific criteria. The criteria in DR12 and 13 are appropriate and can be cross-referenced here, with reference also to the possibility of a Standard, in case further rules are required. In addition, excluding confidential material, the entire Plan of Work should be open to comment - we suggest this section be bracketed until members have discussed DR 11.

In the chapeau of paragraph (6), we believe the term 'Commercial Production' should be used, rather than the undefined term 'production'. (Noting that the definition for 'Commercial Production' indicates that Commercial Production is different from 'production intended for information-gathering, analysis or the testing of equipment or plant'.)

We also propose an amendment to sub-paragraph (b) so that the ISA is the entity who confirms their own receipt of the Environmental Performance Guarantee, rather than leaving this to the Contractor's discretion.