

TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION: COUNCIL - PART I

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 18bis

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 quat. Contractors shall comply with the national laws, regulations and administrative measures of the sponsoring State or States made pursuant to articles 139 and 153 (4) of the Convention and article 4 (4) of annex III to the Convention.

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

We suggest a new 1 quarter, which requires Contractors to comply with the national laws, regulations and administrative measures of their sponsoring State or States. This wording has been proposed for a new 12bis, but would better fit here. We consider it is a good idea for the Regulations to include that obligation, as it allows the ISA to take its own regulatory action, in the event it is notified by the sponsoring State of a breach of national laws.

As a general comment, we support the provisions in paragraphs (2) and (3) in principle, which seek to place obligations on parties related to the contractor, but would welcome Council deliberation as whether 18bis achieves the aim on its own, or whether additional measures may be required, such as requiring the Contractor to declare all affiliated parties in their application, and having those parties also sign the ISA contract, or a side agreement acknowledging their liability obligations? We believe the following questions would benefit from further discussion, as from our perspective remaining unaddressed in these Regulations:

- Who can make a claim for compensation?
- What types of loss can be claimed?
- How will damages be assessed and quantified?
- What standard of liability will Contractors be held to in the event of environmental harm - strict liability, or will evidence of malfeasance or negligence be required to recover damages from the Contractor?
- What aspects of the liability regime will be covered by national regimes and court procedures?
- In what circumstances is the Environmental Compensation Fund to be used?
- Does the ISA's interpretation of the requirement for 'effective control' between sponsoring State and Contractor support the envisaged liability regime?

We support those commenting on the need for more work on liability and we note the useful papers produced by the Legal Liability Working Group in 2018. Unless and until the Council takes proactive steps to address these issues, it leaves serious gaps in the liability regime.