

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.im.

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 21

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.alt. ~~[Without prejudice to any terms, rights or obligations between a State and a Contractor under the terms of sponsorship,] [A] [a] State may terminate its sponsorship by providing to the Secretary-General a written notice describing the reasons for such termination and the date termination is to take effect, [no earlier than] ~~taking into account the following timeframes:-~~~~

~~(i) Termination due to a Contractor's [material] non-compliance under its terms of sponsorship, negligence or environmental damage; termination to take effect [no earlier] [no later than] [6] months after the date of receipt of the notification by the Secretary-General;~~

~~(ii) Termination due to reasons other than those listed in subparagraph (i) above: termination to take effect no [earlier] [later] than 12 months after the date of receipt of the notification by the Secretary-General.]~~

[2.alt.bis. If the reasons for termination of sponsorship include Contractor non-compliance ~~under its terms of sponsorship, negligence or environmental damage~~, that may be a breach of the Rules of the ISA, the [xxx] shall issue a compliance notice under regulation 103 requiring the Contractor ~~must~~ to suspend its mining operations until the Council has considered the matter in accordance with paragraph 6 below.]

3. In the event of termination of sponsorship, ~~[due to reasons other than those listed in subparagraph 2 (i)]~~ the Contractor may ~~[shall]~~, ~~[within the period referred to in [sub]paragraph 2 (ii)]~~ ~~[before the previous State's sponsorship ends]~~, obtain another Sponsoring State or States in accordance with the requirements of regulation 21 6, ~~and in particular in order to comply with regulation 6 (1) and (2)~~. Such State or States shall submit a certificate of sponsorship in accordance with regulation 6. The exploitation contract terminates automatically if the Contractor fails to obtain a Sponsoring State or States within the required period. ~~For the avoidance of doubt, the Council shall provide written notice of the termination to the Contractor. [unless the Contractor has sought the Council's consent to transfer its rights and obligations under the exploitation contract pursuant to regulations 23].~~

4. A Sponsoring State or States is not discharged from any obligations accrued while it was a Sponsoring State by reason of the termination of its sponsorship nor shall such termination affect any legal rights and obligations created during such sponsorship ~~[consistent with the requirements of contractors, including as set forth in Annex III, Article 17.2(e) of the Convention].~~

6. After a Sponsoring State has given a written notice in accordance with paragraph 2 above, the Council, based on the recommendations of the Commission, ~~which shall take account of the reasons for the termination of sponsorship, [especially in the case of termination of contract that also equates to a material breach of compliance] [with the terms of the exploitation contract] [may]~~ **[shall]** require the Contractor to suspend, [or continue the suspension of,] its mining operations until such time as [the Contractor has proved to the satisfaction of the Council that the breach of compliance with the exploitation contract has been addressed and] a new certificate of sponsorship is submitted.

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

For 2 alt, we do not understand the policy reasons for imposing specific time limits as laid out in paras. (i) and (ii). It seems unnecessary interference with the sponsoring State's own decision-making and could serve to cause a sponsorship vacuum, for timing reasons that seem arbitrary.

For 2 alt bis we think the language about negligence or environmental damage seems potentially subjective or inconsistent. We would suggest that the reasons here should be aligned with the specific circumstances of Contractor non-compliance that would trigger use of DR103 or other suspension provisions under the Regs. We also believe this provision could be further strengthened if a compliance notice is used to give effect to this suspension, so that the procedure, accountability, and timing is unambiguous. While DR 103 continues to be discussed we recommend this be put into brackets and revisited.

These provisions should also be aligned with the Exploration Regulations, which require a minimum of six months' notice.

As general comment here and which applies to various places within the Regulations, including DR 21, as well as 28, 29, 80, 99 and 103) - there is inconsistency in the terminology used across these different regulations to describe what, specifically, is suspended ('operations', 'activities', 'production', 'contract'). None of the terms used are defined terms. This may lead to ambiguity, subjective interpretation, and difficulty for the ISA to enforce the requirements. In addition, some of the suspension provisions lack clear decision-making procedures and decision points, particularly with regard to when activities may or must re-commence.

Regarding paragraph 3, we do not agree with the insertion of '[due to reasons other than those listed...]', as this could prevent a Contractor from obtaining alternative sponsorship in the event the sponsoring State withdraws sponsorship on the grounds of any act (within the State's own interpretation of 'non-compliance'). We agree with the proposed addition of 'before the previous State's sponsorship ends' as the appropriate timeframe in which new sponsorship may be acquired for a subsisting contract.

We suggest this paragraph should be phrased as a 'may' rather than a 'shall', as the Contractor is not obliged to obtain another sponsoring State, if it is content to let the contract terminate.

In addition, we suggest wording be included in this paragraph (3) to ensure clear notification from the Council to the Contractor, in the event that the contract has been terminated under this regulation.

Regarding paragraph 4, we do not understand the bracketed text here pertaining to 'requirements of contractors'. What requirements, and how are these relevant to a State's legal rights and obligations as an ISA sponsoring State? Or to the UNCLOS section cross-referenced, which provides that 'the operator shall have the right at any time to renounce without penalty the whole or part of his rights in the area covered by a plan of work'?