

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28<sup>TH</sup>  
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](mailto: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 29

**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. If the Contractor proposes to continue the reduction or suspension due to market conditions for more than 12 months, the Contractor shall notify the Secretary-General in writing, at least 30 Days prior to the end of the 12-month period, giving its reasons for seeking a further reduction or suspension of that length of time. ~~If business practices are suspended due to global economic conditions or force majeure, the contractor shall be allowed to maintain a longer suspension.~~ The Commission shall in consultation with the Economic Planning Commission, upon determining whether ~~that~~ the reasons for the reduction or suspension are reasonable and outside of the Contractor's control, and a reduction of suspension would be in the best interests of mankind in the circumstances, including where the prevailing economic conditions make Commercial Production impracticable, and shall ~~for other circumstances beyond the Contractor's control~~ recommend approval or disapproval of the suspension to the Council. The Council shall, based on the recommendation of the Commission, [consider] [decide on] the reduction or suspension requested by the Contractor and the Secretary-General shall notify the Contractor and the sponsoring State of that decision within 48 hours. The Contractor may apply for more than one suspension. ~~During the period when the Contractor reduces or suspends production, the annual fixed fee or royalties paid by the Contractor shall may be exempted or deducted appropriately.~~

*Regulation 29 bis.*

*Extended suspension in production may lead to contract termination*

- 1. In the event of any suspension in Exploitation activities pursuant to these regulations, the Contractor shall continue to monitor and manage the Mining Area in accordance with the Closure Plan of Work.*
- 2. Where the Contractor suspends all production for five years or more, the Council may terminate the exploitation contract in accordance with these regulations and the terms of the contract, and the Contractor shall be required to implement the final Closure Plan.*
- 3. Upon contract termination under this regulation, the Contractor shall be entitled to priority and preference in exploiting the same area for the same resource in the future.*

4. A Contractor shall notify the Secretary-General as soon as it recommences any mining activities, and no later than 72 hours after such recommencement, and, where necessary, shall provide to the Secretary-General such [non-market] information as is necessary to demonstrate that the issue triggering a reduction or suspension has been addressed. The Secretary-General shall publish notice on the website of the Authority and shall notify the Council that production has recommenced.

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

On para 2, we recommend involvement in this process of the Economic Planning Commission (the organ of the ISA tasked to 'review the trends of and the factors affecting supply, demand and prices of materials which may be derived from the Area'.)

We propose other drafting edits proposed to this DR29(2) to correct previous language which appeared to presume that the LTC could only approve (and not disapprove) a reduction or suspension. We also agree with the inclusion in DR19(2) of basic criteria for the LTC recommendation (reasonableness, force majeure, and public interest), but suggest different drafting from that bracketed in red text, which does not align well with the rest of the paragraph.. Even if it is very likely that the ISA would approve any such request made under DR29, it remains important nonetheless to have an accountable decision-making process. For that reason, we would prefer the original paragraph (2) (as amended) to the proposed 2 alt.

The draft Exploitation Regulations contain a few provisions whereby the ISA may communicate important decisions to the Contractor, without a parallel requirement to notify the sponsoring State, as is the case here in DR29(2). This should be remedied to provide the sponsoring State with the best possible information to be able to carry out its duties.

In our view, it is unnecessary to specify here that the royalties payable should be reduced during a suspension, as the royalties are specifically calculated upon the quantity of ore extracted, so automatically reduce as the volume of production reduces. Like the UK, we also query why the annual fixed fee would be reduced or suspended, if that fee is a payment by the Contractor for the mining rights, and/or a fee that covers ISA regulatory costs, then Council may wish to consider whether it should remain payable even during mining suspensions.

On para 3: We would re-locate this paragraph to form a new, standalone DR29bis. because it should apply to ALL suspensions (which may arise for different reasons) and not only for suspensions arising from Contractor requests and market conditions under this DR29.

It is not clarified in DR 29(3) whether only specific parts, or all of the Closure Plan will be applicable during such a suspension. This may lead to confusion. We suggest that the Closure Plan may need to have a dedicated section relating to suspension-related activities, for this provision to make sense. The Closure Plan's general management and monitoring provisions are likely to relate to post-mining activities, not to temporary suspensions, and as such may not apply suitably here. Also, the Closure Plan exists in draft format for most of the contract period (awaiting finalisation at the end of Commercial Production). which means it cannot be implemented without notice, as is suggested in DR29(3). A standalone section in the Closure Plan relating to suspensions, which has approval from Council for use during the contract term, may help address this.

We also note that although there are several references to, and triggers, for possible suspensions in the draft Regulations, the only suspension provision that expressly references the Closure Plan is DR29(3). The drafting here is unclear whether this DR29(3) could apply to all and any suspensions in the Regulations, or just to DR29 circumstances. This is further confused by DR29(3) referring to 'suspension in mining activities', which is not the terminology used in any of the Regulations' suspension provisions, including DR29(1) or the last sentence of DR29(3) itself, which refers to suspension of production. It is unclear if this has the same meaning as the suspension of 'activities' referenced earlier in the same paragraph.

Re para 4: We suggest to include this paragraph, from proposed DR29 Alt, as a useful means for the Authority to obtain relevant information to the Authority's oversight of exploitation, from further along the project life cycle.