

## 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.im](mailto: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 95

**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. **alt.** The Commission ~~[or other subsidiary organs of the Authority where so requested by the Council]~~, shall, from time to time, develop Guidelines of a technical nature, ~~for the guidance of Contractors]~~ in order to assist in the implementation of these Regulations, taking into account the views of relevant Stakeholders and competent independent experts ~~[identified in accordance with Annex XI].~~

2. The full text of such Guidelines ~~or any revisions thereto~~ shall be ~~[reported]~~ ~~[recommended]~~ to the Council ~~as soon as they are developed~~ ~~[for adoption]~~. ~~[In case of Guidelines which are not of a predominantly administrative nature,] [t][T]he Council shall take into account statements submitted by Stakeholders during public consultation]~~. Should the Council find that a Guideline is inconsistent with the intent and purpose of the Rules of the Authority, it may ~~[direct]~~ ~~[request]~~ that the Guideline be modified [or withdrawn]. ~~[Where no such [direction] [request] is made the Council shall approve the Guidelines].~~

[4. Guidelines are only of a recommendatory nature ~~yet Contractors shall ensure they are apprised of the Guidelines and take them into account in their performance of functions under these regulations and their contract.~~The observance of a Guideline by a Contractor may serve as evidence of compliance by that Contractor with the relevant Rules of the Authority to which the Guideline relates. The Authority may also request applicants or Contractors to identify and explain departures from Guidelines. ~~]and do not affect the Contractor's performance of the Exploitation contract by means other than the Guidelines.]~~

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

On para 1 alt, we support the reference to other subsidiary organs, in case there are occasions where other organs of the ISA are best positioned to issue Guidelines. For example, the Economic Planning Commission (once formed) might be tasked with developing Guidelines in relation to compensation or other measures of economic adjustment assistance for developing States whose economies are adversely affected by mining in the Area.

We agree with the deletion of reference to Guidelines being for the 'guidance of Contractors', as Guidelines may also be developed for other audiences e.g. ISA organs.

We recommend inclusion of text to reflect that the LTC may also wish to confer with competent independent experts (as per its discretion and obligation pursuant to UNCLOS Articles 163(11) and 165(2)(e) respectively) and to be consistent with text proposed in DR 94.

Finally we note a need to clarify the requirement for public consultations, which may benefit from consistent drafting to DR95, and other parts of the Regulations. We note that this aspect may need to be revisited depending on the outcomes of the intersessional working group on standardising stakeholder consultation.

We suggest that paragraph (2) requires revisions to Guidelines to be reported to the Council as well as new Guidelines, to be consistent with paragraph (3) below. Also that there should be some urgency for the Guidelines to be reported to Council, so Council has an opportunity to check for any issues or objections, before the Guidelines are in operation for too long.

We support the deletion of 2bis.

The Regulations do not indicate the status or import of Guidelines. There is no general wording requiring Contractors to apprise themselves of Guidelines, or to take account of them in their conduct. Text has been deleted from the Standard Contract Terms requiring Contractors to “observe, as far as reasonably practicable, any guidelines which may be issued by the Commission or the Secretary-General from time to time” (section 3(c), Annex X). We suggest some replacement wording in paragraph 95(4) to require Contractors to apprise themselves of the Guidelines and to take them into account. The ISA may also wish to use Guidelines as a means of compliance assurance, so that adherence to a Guideline, while not mandatory, provides a measure of comfort that the relevant outcome will meet ISA rules.

We also propose a new last line to paragraph (4), enabling the ISA to ask Contractors to explain departures from Guidelines. This is recommended both to help the ISA in reviewing Contractor compliance, and also so that the ISA is able to keep up-to-date with possible new and improved methodologies, and the currency of the Guidelines.