

**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 20

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. Subject to the provisions of section 8.3 of the exploitation contract, the maximum initial term of an exploitation contract is 30 years from execution of the contract. [from the commencement of Commercial Production]; [The Authority and the Contractor may agree to a shorter period in light], [taking account] of the expected economic life of the Exploitation activities of the Resource category set out in the Mining Workplan [and the policies and objectives of the Authority cited in regulation 2] and including a reasonable time But period for the construction of commercial scale mining and processing systems].~~

~~[3.Alt. The Contractor submitting an application to renew an exploitation contract shall supply a revised Plan of Work, including an updated EISA, as well as such documentation as may be specified in any applicable Standard and taking account of Guidelines. Submission of a revised Plan of Work for the purposes of this regulation is deemed to be a Material Change for the purposes of regulation 57.]~~

6. The Commission ~~[shall]~~ [may] recommend to the Council the approval of an application to renew an exploitation contract, and [an exploitation contract shall may be renewed by the Council provided that:

~~[(a) The Resource category is recoverable annually in Commercial and Profitable Quantities from the Contract Area;]~~

~~(a)alt The term of renewal reflects the expected economic life of the mining project, taking into consideration such factors as the depletion of the ore, the useful life of mining equipment and processing facilities and commercial viability.~~

~~(b) The Contractor is in compliance with the terms of its exploitation contract and the Rules of the Authority; including the rules, regulations and procedures [and Standards] adopted by the Authority [from time to time] to ensure effective protection for the Marine Environment from harmful effects which may arise from activities in the Area;~~

~~9. Sponsorship is deemed to continue throughout the renewal period unless the Sponsoring State or States terminates its sponsorship in accordance with regulation 21.~~

10. An exploitation contract in respect of which an application for renewal has been made ~~shall~~ [may, for a maximum of [three] months after its expiry date and only under extraordinary circumstances], despite its expiry

date, remain in force until such time as the renewal application has been considered and its renewal has been granted or refused.

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

Regarding paragraph 1, we believe this regulation should provide rules for maximum contract terms and renewals and that there shouldn't be discretion allowed for exceptions to the rule to be agreed from contract to contract. We also disagree with the suggestion that the term should run from the date of Commercial Production, as Commercial Production is a moveable date (largely within the Contractor's control, and outside of the ISA's control), which may not start until some years into the contract. To run the contract term from such an unknown date would present significant uncertainty, and differentiated contract terms and as such we would prefer the term be from the execution of the contract. We also agree with the proposed amendment which would provide the Authority the right to agree shorter terms, not only on the basis of deposit size, but also for other policy reasons, such as for precautionary reasons allowing a shorter mining time to be monitored before approving longer terms, and/or to support the ISA's ability to improve regulatory standards as scientific knowledge improves over time).

For paragraph 3alt, we prefer the alternative text.

The LTC, in its cover note to the draft Regulations in 2019 [ISBA/25/C/18], stated that it: "took note of stakeholder comments of the need for a greater level of scrutiny at the time of a renewal application, including the submission of a revised plan of work." But this note is not well-reflected in DR20 (unless paragraph 3 Alt is accepted). Without para 3 Alt, the Contractor has the power to decide whether or not to submit a new Plan of Work. This is likely to make the decision a commercial (rather than regulatory) one. While a streamlined contract renewal process can be desirable, an appropriate level of regulatory control should be retained.

To access information adequate for the extension of an exploitation contract, the ISA should require submission and review of a new or materially amended Plan of Work to cover that:

- a. the previous Plan of Work would have been time-bound within the initial contract period, and therefore would need alteration to be extended;
- b. there are likely to be new and unanticipated developments to consider in renewal decisions that take place some 30 years after the original application;
- c. DR20 does not limit the number of contract renewals and sets a presumption in favour of renewal (see DR20(6), which contains only limited circumstances in which a renewal will not be granted). As currently drafted, the Regulations could allow infinite contract extensions without any new Plan of Work, nor any consultation with Stakeholders;
- d. if a renewal is granted the Plan of Work will be the document that sets out the activities the Contractor is legally bound to perform.

These are the reasons why we support paragraph 3 Alt over existing 3.

Regarding paragraph 6, we welcome the additional provisions that have been inserted below which attempt to include consideration of regional or strategic issues.

We would recommend an alternative subparagraph aalt in order to align with UNCLOS (Annex III, section 17), and because the different meanings behind 'commercial' and 'profitable' are unclear, and may be inappropriate, such as excluding a State-owned Contractor who retains the ore, so it is neither sold 'commercially' or at a profit.

Regarding subparagraph b, the definition of the 'Rules of the Authority' already includes 'rules, regulations and procedures of the Authority' so this text can be deleted. The proposed amendments to this defined term includes Standards or decisions of the decision-making organs of the ISA - if these are not retained in the Schedule then we would suggest they be added in here as well. Additionally, while we agree in principle to the reference to environmental protection we don't see a reason it needs to be included here.

We support inclusion of subparagraph (b)(bis) which we believe attempts to ensure that the Council may not want to approve a renewal for regional/strategic issues, such as unacceptable cumulative impacts that may arise from the approval of multiple mining operations. It may make sense for this criteria (or a variation of it) to be included in DR 13 as it also seems applicable to consideration of the approval/execution of a new contract.

Paragraph (9) can be deleted in light of proposed DR20(6)(f).

Lastly, in paragraph 10 we recommend reinsertion of a previous proposal made by [Chile], to limit the time and the circumstances in which an exploitation contract can remain in force beyond its expiry date. We don't recall any member States speaking against this proposal and do not see any submissions that have suggested it be stricken. This proposed amendment would assist in avoiding a situation where a contract continues to run by default indefinitely in the absence of a decision by the ISA. This seems appropriate in terms of the ISA maintaining an appropriate degree of control over activities in the Area.