

**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:

Open-ended Working Group on financial terms of a contract

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 76

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. Where the [Secretary-General] so determines, taking into account the relevant guidance provided by the Council and following any audit under this Part, or by otherwise becoming aware that any royalty return is not accurate and correct in accordance with this Part, the [Secretary-General] may, by written notice to a Contractor, request any additional information that the [Secretary-General] considers reasonable in the circumstances, including the report of an auditor.

2. A Contractor shall provide such information requested by the [Secretary- General] within 60 Days of the date of such request, together with any further information the Contractor requires the [Secretary-General] to take into consideration.

4. The Secretary-General shall provide the Contractor with written notice of any proposed assessment under paragraph 3 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The [Secretary-General] shall consider such representations and shall confirm or revise the assessment made under paragraph 3 above.

5. The Contractor shall pay any such royalty liability within 30 Days of the date of the determination made by the [Secretary-General] under paragraph 4.

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

We would appreciate clarification in the drafting as to how this DR76 request for further information from the Contractor by the Secretary-General relates to the DR72 request for further information from the Contractor by the Secretary-General? They seem to cover the same issue but with different deadlines. Could the two be merged to avoid duplication, but retaining appropriate triggers and timeframes for when the SG can make such a request and the Contractor’s reply?

As a general point and was raised by other member States in July, the Secretary-General seems to be the organ solely responsible for dealing with royalties, this includes receiving the royalty return, determining whether more information is needed, determining if there should be a refund, agreeing with the Contractor where their records will be held, assessing whether a royalty return is correct and levying a charge for outstanding amounts - even receiving an appeal to that levy himself. The ISA's subsidiary organs are frequently omitted from procedures in this Part of the Regulations, and nor do the Council or the Assembly seem to be involved or acting as a back-stop or over-seer at this stage. This seems at odds with how other matters are dealt with in the Regulations, and we wonder if other ISA organs should be more involved in the management of royalties, and the Secretary-General less relied upon - as is currently drafted in this Part of the Regulations? For example, in paragraph 5 of draft regulation 76, the Secretary-General seems to be inappropriately managing royalty issues on his or her own, even to the extent of reviewing his or her own decision under paragraph (4). We consider it would be sensible and more accountable to have the LTC, or the Finance Committee, or the Compliance Committee or the Council engaged at some points to supervise the Secretary-General's work and/or provide an independent review of decisions. In regulation 77, paragraph 2 we also see the Secretary-General making an important decision, being the party who reviews that decision, as well as being the responsible decision-maker for a subsequent appeal against his or her second decision. This seems to us to be too much power, without any oversight. Again, we consider it would be sensible and more accountable to have the Finance Committee or the Compliance Committee or the Council engaged at some points to supervise the Secretary-General's work and/or provide an independent review of decisions.