

**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 77

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. The Secretary-General shall provide the Contractor with written notice of any proposed determination under paragraph 1 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 determine the liability for a royalty for the original or revised amount. If the Contractor is not satisfied with the Secretary-General’s determination, the Contractor may request a review of that decision in writing and provide any further information the Contractor wishes the [Secretary-General/the Council] to consider within 30 Days of a decision being made.~~The Commission and Finance Committee shall consider any such representations made by the Contractor at their respective next available meetings provided that the representations have been circulated at least 30 Days in advance of the respective meetings. The Commission shall then prepare its report and recommendations to the Council based on consultation with the Finance Committee. The Council shall Secretary-General shall then re-consider and either affirm, revise, or revoke the decision made by the [Secretary-General]., taking into account the further information provided by the Contractor, within 60 Days.~~

4. If the Contractor [incurs] [is found to be in] is in -a [gross and persistent/serious, persistent and willful violation] ~~non-compliance of payment of a breach of royalty payment obligations in accordance with this Part, the Council shall suspend or rescind the Contract pursuant to regulation 103 of these Regulations [and the Contactor’s company principals shall be barred from direct or indirect involvement with any Contractor or subcontractor operating in the Area for a period of [10] years].~~

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

In paragraph 2, the Secretary-General is 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. We wonder if this is too much power, without any oversight. 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.

Regarding para 4, the language of ‘gross and persistent’ breach come from Article 185 UNCLOS, and relates to a State Party and their rights and privileges as a member of the Assembly. We consider more appropriate

language to use here would be 'serious, persistent and wilful violation' in accordance with Article 18 of Annex III, which relates to Contractor compliance with their contract and the rules of the ISA.

In relation to the proposal to bar individual company principals, we think this is a good idea. However, we would prefer to see it broadened into wider situations of any serious, wilful and persistent non-compliance, rather than only relating to royalty payments. We also consider this point should be included in the Regulations that relate to an application for Exploitation and the applicant's qualification criteria (namely DR 5 on qualified applicants, as well as DR 12 and Annex I on content of applications - which should require relevant track record information to be disclosed). This will also mean the track record of the principals can be considered in other situations, for example transfer of contract rights, covered by DR23.