

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29TH 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(s) of Delegation(s) making the proposal:

The Pew Charitable Trusts

2. Please indicate the relevant provision to which the textual proposal refers.

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3. 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. A Contractor shall obtain and thereafter at all times maintain, and cause its subcontractors to obtain and maintain, in full force and effect, insurance with financially sound insurers satisfactory to the Authority, of such types, on such terms and in such amounts in accordance with ~~applicable the-relevant~~ Standards [and ~~taking into consideration~~ Guidelines] ~~and applicable international maritime practice~~, consistent with Good Industry Practice.

[1. bis The insurance required under paragraph 1 shall:

(a) ~~Be~~ proposed at the time of applying for approval of a Plan of Work of exploitation to allow the Commission and Council to assess the satisfactoriness of the proposed insurance ~~policy~~ against this Regulation and the ~~relevant-applicable~~ Standard, ~~taking into account the-and relevant~~ Guidelines; and

....

3. The obligation under an Exploitation Contract to maintain insurance as specified in these Regulations and the ~~applicable relevant~~ Standards ~~[and Guidelines]~~ is a fundamental term of the contract. Should a Contractor fail to maintain the insurance required under these Regulations, the ~~Contractor shall immediately suspend Exploitation activities pursuant to Regulation 29bis. The~~ [Compliance Committee] ~~Secretary-General upon being notified of such a suspension, shall consider what additional compliance action is needed, if any, pursuant to issue a compliancee notice order under~~ Regulation 103. ~~[The Contractor must safely suspend Exploitation activities as soon as it no longer fulfils the obligation to maintain insurance]. The Secretary-General shall notify the Council immediately [at its next available meeting] of such failure, and the corrective measures taken by the Contractor.~~

....

5. A Contractor shall notify the ~~[Compliance Committee through the]~~ Secretary-General [as soon as practicably possible] ~~immediately~~ if the insurer terminates the policy or modifies the terms of insurance, ~~in which case paragraph (3) shall apply, as relevant.~~

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

As mentioned by Bangladesh during the July 2024 Council session, in paragraph (1), we suggest deleting ‘*applicable international maritime practice*’ which could cause confusion. Our understanding is that the insurance

requirement in DR36 should cover deep-seabed mining activities, not associated maritime activity. There will also be requirements in maritime treaties and domestic flag State laws for maritime insurance for vessels used in deep-seabed mining operations, for which international maritime practice is relevant. But this is separate and distinct from the insurance requirements for the deep-seabed mining machinery and operations, which is the aspect that the Regulations and the ISA should require and regulate. The Regulations should be clear about the distinction, and should not conflate them, as this risks gaps in the insurance regime. Guidance as to what type of insurance policies are required should be provided in the ISA's Standards, not third-party material.

We support retention of paragraph (1)(bis) in the Regulations to specify basic high-level requirements, such as the duration and scope of the insurance. Without this direction from the Council, it will be difficult to develop appropriate Standards and Guidelines.

We suggest that '*insurance policy*' in sub-paragraph (1)(bis)(a) should instead be '*insurance*' or '*insurance policies*', as it is possible that there may be multiple policies required to address all the issues that need to be covered.

As also raised by Germany in the July 2024 session, we support that paragraph (3) should be slightly re-ordered (and supplemented) so that where a Contractor fails to maintain their insurance: (i) the Contractor must immediately notify the ISA, and suspend Exploitation activities (following DR29(bis) procedures), (ii) the Compliance Committee and/or the Council will then consider what additional compliance action is needed, if any (pursuant to DR103). We consider it essential that DR36 cross-refers appropriately to both DR103 and DR29(bis) and does not seek to establish different decision-making powers or procedures. In this vein, we recommend deletion of paragraph (3)'s final line ('*The Secretary-General shall notify the Council immediately...*') as Council would already have been notified by the Compliance Committee (pursuant to DR103) upon the issue of the compliance notice that is mentioned in paragraph (3).

It would be helpful if paragraph (5) also describes what the Compliance Commission or Contractor will do (and how any modifications to the insurance will be evaluated), in the event of such notification or termination of insurance. We would presume the Compliance Committee would decide if the notification triggers compliance actions (as also covered under paragraph (3)).

We agree with the various member States during the July 2024 Council session who suggested more work was needed to clarify some substantive issues for DR36 (and the requisite Guideline) These include, but are not limited to:

- How to ensure claims can be made directly against an insurer, in a situation where the Contractor ceases to exist (e.g. through insolvency);
- How to establish where such claims can be brought? Noting that insurance companies will not be subject to the ISA's jurisdiction (nor ITLOS).
- If claims would be brought in domestic adjudication systems, how to ensure the ISA would have legal standing; and,
- Is self-insurance permitted, in the case of State contractors?