

**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. ~~In adherence to~~Consistent with the polluter-pays principle the ~~Fund~~ECF will consist of, but not be limited to, the following monies:

(a) The prescribed percentage or amount of ~~fees~~contribution paid into the Fund~~ECF~~ by Contractors or the Enterprise after approval of a Plan of Work and prior to the commencement ~~[[of activities]-under an Exploitation Contract][of Commercial Production][Commercial Production] [in the Area under an Exploitation Contract]~~ by ~~Contractors or the Enterprise to the Authority~~;

~~[(a) alt. The requirements and modalities governing contributions to the Fund in accordance with regulation 56, including the establishment of the minimum size of the fund, and the modalities for replenishment of the fund upon disbursement;]~~

(b) The prescribed percentage of any penalties paid by Contractors or the Enterprise to the Authority;

~~[(c) The prescribed percentage of any amounts recovered by the Authority by negotiation or as a result of legal proceedings in respect of a violation of the terms of an Exploitation Contracts;]~~

~~[(c) Alt. Establishment of rules, guidelines and modalities for determining entities eligible to access the Fund, which may include states and [third parties private entities] that have suffered damages;]~~

(d) Any other monies paid into the ~~Fund~~ECF at the direction of the Council, based on recommendations of the Finance Committee;

(e) Any income received by the ~~Fund~~ECF from the investment of monies belonging to the ~~fund~~Fund;

(f) An annual levy paid by Contractors or the Enterprise to the ~~Fund~~ECF pursuant to a decision of the Council; and

(g) Any contributions paid by Sponsoring States to the ~~Fund~~ECF.

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

As a general comment on the funding of the ECF, we would be interested to see some modelling of what quantities are expected to be held in the ECF, and how this would be met by the proposed sources of money set out in this DR 56. We are concerned that a shortfall may be likely and/or that there would be a time lag issue where the Fund would be small in size at the commencement of the first mining operations (when perhaps the risks are highest).

As indicated in our comment to DR 54, we recommend consistent use of the same term throughout the relevant regulations to refer to the Environmental Compensation Fund, and consider ‘ECF’ the better option to avoid risk of confusion with any other of the various funds managed by or for the ISA.

In the paragraph (1), we propose various drafting amendments for clarity.

In (1)(a), we find 'commencement of activities' to be too ambiguous and have provided two alternatives for consideration.

We believe that the strike-through wording of (a)(alt.) and (c)(alt) has been placed here in error as these provisions relate to the rules of the Fund (DR54) not its funding which is the subject of DR56. As part of our submission on DR54 we have suggested reinsertion of these two sub-paragraphs (a)(alt) and (c)(alt).

We consider sub-paragraph (f) would benefit from express clarification as to how and by whom such an annual levy would be set.