

## TEMPLATE FOR COMMENTS

<i>Document reviewed</i>	
<b>Title of the draft being reviewed:</b>	Draft Standard and Guidelines on the form and calculation of an Environmental Performance Guarantee
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<i>General Comments</i>	
<p>1) Micronesia acknowledges the Commission’s effort to balance environmental concerns on the one hand and the need to ensure the development of activities in the Area on the other hand. However, it is Micronesia’s view that the surest way to ensure the latter is to address the former, including through the provision of an Environmental Performance Guarantee (“EPG”) that is reliable, solvent, and captures fully the anticipated environmental harms. The International Seabed Authority (“ISA”) and States Parties to the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”) have clear obligations to protect the marine environment, and such obligations must not be subsumed under efforts to ensure the development of activities in the Area, including by ceding too much leeway to Contractors and other entities that the ISA and States Parties are obligated to monitor under UNCLOS.</p> <p>Toward that end, Micronesia recommends that paragraph 7 of the draft Guidelines, in referencing “non-exhaustive forms of guarantees [that] may be proposed by an Applicant or Contractor pursuant to Regulation 26(2),” should also indicate that the listed forms are without prejudice to their respective suitability relative to the other listed forms. Micronesia is concerned that some of the listed forms might not be as suitable as others. A “self-guarantee,” for example, essentially allows a Contractor to financially guarantee its ability to meet its obligations under Draft Regulation 26, but what if the Contractor goes insolvent before the EPG can be accessed? Also, a letter of credit or an insurance bond relies on the financial soundness and reliability of the issuing entity (e.g., a bank or an insurance company), but the draft Guidelines do not contain criteria or similar indicators to allow for an objective assessment of the soundness and reliability of an issuing entity. Thus, Micronesia proposes that paragraph 7 of the draft Guidelines be revised to say the following:</p> <p>“The following non-exhaustive forms of guarantees, listed without prejudice to each form’s relative soundness and suitability, may be proposed by an Applicant or Contractor pursuant to Regulation 26(2)”</p>	

Micronesia also recommends that the ISA develops additional Guidelines on criteria for determining the financial soundness and reliability of issuing entities (e.g., banks and insurance companies), including criteria to be applied by the Council in its review of proposed EPGs.

2) Transparency regarding information submitted pertaining to an EPG as well as related decision-making by the Legal and Technical Commission (“LTC”) is essential, including information on how a Contractor establishes the financial amount needed to cover the scope of its EPG as well as on how the LTC assesses submissions by a Contractor (e.g., assessment criteria for financial entities that issue letters of credit and insurance bonds to Contractors for their EPGs). Such information must be shared to the fullest extent possible to the Council (inclusive of members and observers) as part of its review/oversight functions, as well as made available to the Assembly for discussion purposes. Given the potential environmental harms that might arise from the premature closure of Exploitation activities, the decommissioning of Exploitation activities, and residual Environmental Effects post-closure, including harms that could impact other/ongoing activities in the Area as well as areas within the national jurisdiction of members of the ISA, such transparency is key. Micronesia cautions against any revision to the draft Standard and Guidelines that limits such transparency.

3) Sponsoring States have due diligence obligations under international law to ensure that the entities they sponsor comply with UNCLOS. Toward that end, Micronesia supports language in the draft Standard and/or draft Guidelines requiring a Contractor to consult with its Sponsoring State before lodging an EPG under Draft Regulation 26.

4) Draft Regulation 26(8) makes clear that the provision by a Contractor of an EPG does not limit the responsibility or liability of the Contractor under its exploitation contract to just the amount for the EPG. A Contractor has responsibility/liability for all manner of environmental harms that the Contractor’s activities in the Area cause throughout the entirety of its exploitation contract, not just the harms arising from primarily post-mining activities covered by the limited scope of an EPG. Micronesia appreciates the reiteration of this point in paragraph 12 of the draft standard.

***Specific Comments***

<b>Page</b>	<b>Line</b>	<b>Comment</b>
13	367	<p>Please use the following formulation for the chapeau:</p> <p>“The following non-exhaustive forms of guarantees, listed without prejudice to each form’s relative soundness and suitability, may be proposed by an Applicant or Contractor pursuant to Regulation 26(2)”</p>