

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH SESSION:
COUNCIL - PART III**

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:

President's text

2. Name(s) of Delegation(s) making the proposal:

Republic of Nauru

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

Regulation 18(7)

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.

~~{Regulation18-bis~~

~~Obligations of the Contractors.~~

~~1. Contractors shall comply with these Regulations and the Rules of the Authority in a manner consistent with the Convention, the Agreement and the Exploitation Contract.~~

~~{1.bis. A Contractor shall carry out the proposed Plan of Work in accordance with these Regulations, Good Industry Practice, Best Available Scientific Evidence and Best Environmental Practices, using appropriately qualified and adequately supervised personnel.}~~

~~{1.ter. Contractors shall remain current in their implementation of Best Environmental Practices and Good Industry Practices, and shall continually identify and implement solutions that reflect the most up-to-date Best Available Scientific Evidence and Best Available Techniques.}~~

~~2. Contractors, their holding, subsidiary, affiliated and Ultimate Parent companies, agencies and partnerships shall be held liable for the compliance of the Contract. Particularly, they shall be jointly and severally [and strictly] liable for the obligation of compensating damages arising outside of permitted Exploitation Activities.~~

~~3. In the event that Contractors fail to comply with their payment obligations under these Regulations, holdings and Ultimate Parent Companies shall be held responsible to effect such payments to the Authority on behalf of Contractors.~~

~~4. [Sponsor States shall take all legislative and administrative measures to assure that Contractors have all material, operative, and financial means to comply with the Contract and these Regulations and that no corporate limitation shall prevent Contractors, holding and Ultimate Parent Companies to compensate damages and make the payment required by the Contractors under the Contract and these Regulations.]~~

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

We consider that DR18bis is unnecessary and legally problematic, and support its deletion.

In relation to paragraph 1, the substance of this paragraph is already reflected in the Standard Clauses for exploitation contracts in Section 3.3(a).

Paragraphs 1.bis and 1.ter are also unnecessary as the Draft Exploitation Regulations already apply Good Industry Practice, Best Available Scientific Evidence, and Best Environmental Practices, in their relevant and applicable sections. The exploitation contract will also impose the relevant obligations regarding these concepts upon Contractors. As such it would be unnecessary and potentially ambiguous to repeat them in this context.

In relation to paragraphs 2 and 3, while we recognise the importance of ensuring there is an effective liability mechanism regarding exploitation activities, there is no legal basis for the approach proposed. The primary contractual relationship regarding exploitation rights is between the Contractor and the Authority. It is the contractor that remains responsible and liable for its performance under the contract. It is not legally permissible nor appropriate for the Authority to attempt to unilaterally expand the scope of liability under the contract to entities that are not party to that contract. Indeed, Nauru also considers these paragraphs are contrary to basic contractual rules and norms of the legal systems of most member States. For example, you cannot bind contractual obligations to non-parties of a contract.

From a practical perspective, we would note that any due diligence exercise conducted by a sponsoring State should include a review of the contractual arrangements with key third party technical providers, including how risk is allocated and the suitability of indemnification provisions as well as putting in place appropriate guarantees and indemnities between a sponsoring State, sponsored contractor and relevant group entities.

As to paragraph 4, the Convention requires Sponsoring States to take necessary and appropriate measures to secure compliance by Contractors with their obligations. It is a matter for each sovereign Sponsoring State to determine the appropriate measures it will take to regulate Contractors consistently with its legal and due diligence obligations under the Convention and the 2011 Advisory Opinion.