

**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:

The Ocean Foundation, Observer

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

Part III: Rights and obligations of Contractors

Regulation 22: Use of exploitation contract as security

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.

5. A Contractor shall file with the Seabed Mining Register a ~~summary true, complete, and correct copy~~ of any agreement that results or may result in a transfer or assignment of an ~~exploitation-Exploitation contractContract~~, part of an exploitation contract or any interest in an exploitation contract, including registration of any security, guarantee, mortgage, pledge, lien, charge or other encumbrance over all or part of an ~~exploitation-Exploitation contractContract~~.

6. The Authority shall not ~~be obliged to~~ provide any funds or issue any guarantees or otherwise become liable directly or indirectly in the financing of the Contractor's obligations under an ~~exploitation-Exploitation contractContract~~.

7. As a condition to giving consent under this regulation, the beneficiary of any encumbrance referred to in paragraph 1 above shall agree to assume all of the obligations of the Contractor upon any foreclosure, including, without limitation, all payment obligations to the Authority required under the Contract, these Regulations, and the Rules of the Authority.

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

Clause 5: A summary of the relevant agreement is insufficient and not typical of how records of security interests typically operate – the full contract should be filed, and be of public record (as is the case for aircraft security agreements, or land mortgages, for example). Certain proprietary commercial terms can be scheduled and kept confidential. Clause 6: It is essential that the Authority not be involved in the financing or guaranteeing of any Contractor’s obligations under any exploitation contract. To do so would constitute a massive conflict of interest. Clause 7: We agree with the spirit of the proposed amendment to #5 set out in the March 3 markup to the President’s Text (“Nothing in this regulation shall relieve a Contractor of any obligation or liability under its exploitation contract, and the Contractor shall remain responsible and liable to the Authority for the performance of its obligations under its exploitation contract in the event of a termination of sponsorship.”) However, in practice, if a lender has foreclosed on a Contractor, the Contractor is most likely insolvent and would therefore be unable to pay any of its obligations under the exploitation contract. The draft regulations should be clear that any foreclosing party shall become liable for the obligations of the debtor Contractor into whose shoes they have stepped. That is, a debtor Contractor facing a bill for damages should not be able to declare bankruptcy or refuse to pay a judgment against it (both of which would usually constitute a default under its loan), then have a lender step in and take over the Contract without agreeing to pay for the damages of the predecessor Contractor as a condition to such assumption.