

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 30TH SESSION:
COUNCIL - PARTS I**

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:

Republic of Nauru

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

Regulation 13

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.

2. The Commission shall determine whether the applicant meets the following criteria: ...

(c) The applicant ~~and, if applicable its parent company, legal predecessor, senior management and controlling shareholders,~~ have satisfactorily discharged their obligations to the Authority, including having a satisfactory record of past performance both within the Area and in other jurisdictions;

4. In considering the proposed Plan of Work, the Commission shall take into account:

~~(a) for Any advice or reports received from any competent organ of the United Nations or of its specialized agencies or any international organizations with competence in the subject matter;~~

3. In considering the financial capability of an applicant, the Commission shall determine, in accordance with Standards and taking into consideration the Guidelines, whether: ...

(b) The applicant is or will be capable of committing ~~[or raising]~~ sufficient financial resources to cover the estimated costs of the proposed Exploitation activities as set out in the proposed Plan of Work, and all other associated costs of complying with the terms of any Exploitation Contract, including: ...

4. In considering the technical capability of an applicant, the Commission shall determine, in accordance with Standards and taking into consideration the Guidelines, whether the applicant has provided sufficient information to demonstrate it has or will have: ...

(c) The technology, ~~[knowledge]~~[data, information], and procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan and the Closure Plan, ~~and taking into account~~ the applicable Regional Environmental Management Plan, including the technical capability to identify and monitor key environmental parameters and ecosystem components so as to detect any adverse effects, and to modify management and operating procedures as required to ~~meet all environmental requirements~~ ensure the effective protection of the Marine Environment;

~~5. In considering whether the applicant is under the Effective Control of the Sponsoring State, the Commission shall determine:~~

~~(a) [insert wording based on outcome of intersessional work];~~

~~(b) Whether the Sponsoring State has enacted domestic legislation covering activities in the Area that:~~

~~(i) is in force and applicable;~~

~~(ii) provides available recourse through the domestic legal system in accordance with Article 235(2) of the Convention; and~~

~~(iii) does not contain provisions that exempt liability of the sponsored entity from a cause of action that may result from its conduct of activities in the Area.~~

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

Paragraph 2(c): the Authority should not be attempting to expand its jurisdiction to include a range of parties that are not parties to contracts with the Authority or otherwise are subject to its jurisdiction. Instead, sub-paragraph 2(c) should focus on the applicant itself without reference to these other entities. Consequently, the text “and, if applicable its parent company, legal predecessor, senior management and controlling shareholders” should be removed.

Paragraph 3(b): consistent with our comments on draft regulation 7(3.bis), we consider it important that the Draft Regulations allow for applicants to demonstrate they “will have” the relevant capabilities and capacities, instead of requiring them to fully possess these at the time of their application. Some capabilities and capacities will be dependent upon applicants receiving a Plan of Work and it would not be appropriate or fair to require them to have these at the time of application. Therefore, we suggest the words “or will be” are inserted after “the applicant is”.

Also, it is unclear why “or raising” has been deleted from paragraph 3(b). Many contractors will necessarily need to raise funds to undertake their proposed activities, as is common in many extractive industries. The draft regulations should allow for applicants to demonstrate their capability to raise funds (or that they will have this capability) and not just refer to applicants “committing” funds. We suggest “or raising” is retained.

Paragraph 4: we consider it important that the regulations allow for applicants to demonstrate they “will have” the relevant technical capabilities and capacities, instead of requiring them to fully possess these at the time of their application. Some capabilities and capacities will be dependent upon applicants receiving a Plan of Work and it would not be appropriate or fair to require them to have these at the time of application.

Paragraph 4(c): it is unclear what “all environmental requirements” is referring to and how this would be used to evaluate the criteria under this sub-paragraph.

Paragraph 5: we acknowledge that work is progressing on the issue of effective control. However, we are concerned by paragraph 5’s apparent requirement that the Commission assess and potentially second guess declarations by Sponsoring States regarding their sponsorship. This has no basis in UNCLOS of the 1994 Agreement and would involve the Commission involving itself in Sponsoring State’s sovereign rights. We suggest this paragraph is deleted.