

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 31TH SESSION:
COUNCIL - PART 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:

Germany

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

Topic: Parent Company Liability Statement, DR7, DR13, DR 23, DR24, DR103, Annex XI, Schedule

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.

Regulation 7

(3) ~~bis~~-An application shall [...] be accompanied by the following: [...]

(m) in the case of an Applicant with a Managing Company, a Parent Company Liability Statement in the format contained in Annex XI to the Regulations.

Regulation 13

[...] (3) In considering the financial capability of an Applicant, the Commission shall determine, in accordance with ~~these Regulations~~, Standards and taking into account the Guidelines, whether:

(e) in the case of an Applicant that the Commission reasonably determines has a Managing Company, the Managing Company has, or undertakes as a precondition to a Contract that it will issue, a satisfactory Parent Company Liability Statement, and that the Managing Company has capability to meet its obligations under the Parent Company Liability Statement.

Regulation 23

Transfer of rights and obligations under an Exploitation Contract

5[(d)] in the Commission’s reasonable determination, result in the Transferee having ~~be foreseen that neither the Managing Company of the Contractor nor the Managing Company of the Transferee~~ that is unable or unwilling ~~not to~~ issue a satisfactory Parent Company Liability Statement or that does not have capability to meet its obligations under a Parent Company Liability Statement.

8. A transfer is validly effected only upon: [...]

(e) in the case of a Transferee with a Managing Company, the receipt by the Authority of the Parent Company Liability Statement.

Regulation 24

Change of Control

1.ter In the case of a proposed Change of Control, if a State Party or States Parties have submitted a certificate or certificates of sponsorship and the Commission or Council, as applicable, is still reviewing whether the Contractor has the appropriate sponsorship and a Contractor proceeds with a Change of Control before the Council has decided that the Contractor has the appropriate sponsorship, no activities under an Exploitation Contract may be carried out until the Council has decided that the Contractor has the appropriate sponsorship. *[suggest to relocate the following text to a new 5 ter] If the Council decides that the Contractor lacks the appropriate sponsorship or does not have the operational or financial capability to meet its obligations under its Exploitation Contract, or its Managing Company will not have the capability to meet its obligations under the Parent Company Liability Statement, but the Change of Control has already occurred, the Exploitation Contract shall terminate automatically.*

2. Upon notification of a proposed Change of Control of a Contractor, after ~~considering information and documents and~~ consulting the Contractor or entity providing the Environmental Performance Guarantee, as the case may be, the Commission shall: [...]

~~{(b) determine whether the Change of Control introduces a new the identity of any Managing Company of the Contractor, in which case that Managing Company shall be required to issue a Parent Company Liability Statement effective as of the Change of Control; In the case of a Contractor, treat a Change of Control as a transfer of rights and obligations in accordance with the requirements of these Regulations, in which case Regulation 23 shall apply be it that, further to Regulation 23, the party that will come to qualify as the Contractor's Managing Company shall issue a Parent Company Liability Statement effective as of the Change of Control;}~~

4. Where the ~~{Commission}~~ determines that, following a Change of Control, a Contractor:

~~(a) may not have the {operational or} financial capability to meet its obligations under its Exploitation Contract or~~

~~(b) lacks the appropriate sponsorship, {or~~

~~(c) has a its Managing Company that~~

~~(i) will not issue a satisfactory Parent Company Liability Statement or~~

~~(ii) will not have the capability to meet its obligations under the Parent Company Liability Statement},~~

the Commission shall submit a report of its findings and recommendations to the Council, and ~~t.14~~ the Council shall consider the matter at its next meeting with a view to taking a decision in accordance with this regulation.

5. Where the Council decides that a Contractor upon a Change of Control may not have the operational or financial capability to meet its obligations under its Exploitation Contract, or lacks the appropriate sponsorship, or its Managing Company will not issue a satisfactory Parent Company Liability Statement or will not have the capability to meet its obligations under the Parent Company Liability Statement, the Contractor may decide not to proceed with the Change of Control, in which case the Exploitation Contract remains in full force and effect.

5 bis. This regulation shall apply mutatis mutandis to a Change of Control of an Applicant.

5 ter *[suggested relocation from 1 ter]* If the Council decides that upon a Change of Control a the Contractor lacks the appropriate sponsorship or does not have the operational or financial capability to meet its obligations under its Exploitation Contract, or, where applicable, its Managing Company will not have the capability to meet its obligations under the Parent Company Liability Statement, but the Change of Control has already occurred, the Exploitation Contract shall terminate automatically.

Regulation 103

Compliance and enforcement measures by the Compliance Committee

(9) The Compliance Committee may also take measures or make recommendations pursuant to this regulation *mutatis mutandis* in the event it reasonably determines that a Contractor's Managing Company, where applicable, is failing to meet, or lacks the capability to meet, its obligations under the Parent Company Liability Statement.

Schedule

["Managing Company"]	[means the ability to exercise voting power over the Contractor, the authority to appoint or dismiss members of the Contractor's board, the capacity to direct or influence major operational decisions of the Contractor, or any other circumstances in which a company exerts or is capable to exert a dominant degree of influence over the Contractor.]
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4. Please indicate the rationale for the proposal.

Germany welcomes the focus and continued work on the issue of parent company liability. We agree with the importance of addressing realities of modern corporate structures, where operational control and financial capacity often sit with a parent or holding company rather than the subsidiary that holds the contract. For this reason, Germany supports in principle the proposal advanced by the Netherlands for the Authority to require written assurances from parent companies to assume liability where the applicant is a subsidiary.

Rationale for the edits proposed herein is as follows:

- We believe that not all Contractors would need a Parent Company Liability Statement. For example, we see that the Enterprise, or companies that are not subsidiaries, would be unable to obtain such a Statement. Similarly, we believe the requirement cannot apply to Contractors that are States. If this is correct, we think the regulations should be clear that the Parent Company Liability Statement is required only in the case of Applicants or Contractors who have a Managing Company. This will avoid the Council setting a requirement for all Contractors that many applicants would be inherently unable to meet.
- The first requirement for a Parent Company Liability Statement comes in draft regulation 18bis. We think it should also be included prior to this, in the regulations that cover the initial Contract application and approval processes. Our understanding is that Contractors that are corporate subsidiaries should not be awarded a Contract in the first place, if their managing company does not provide the Statement, or does not have capability to meet its obligations under the Statement. We propose some additions to draft regulations 7 and 13 aimed to cover this.
- We consider that the requirements for the Parent Company Liability Statement should be consistent throughout the Regulations, which means that each time it is referenced it should be clear that the test is three-fold, i.e. (i) does the Applicant/Contractor have a

Managing Company? If so, (ii) is the Managing Company willing to issue a satisfactory Parent Company Liability Statement ('satisfactory' here, can cover e.g., meeting the relevant timing and content requirements set out in the Regulations), and (iii) does the Managing Company have capability to meet the obligations under the Statement?

- We note the importance of the criterion of capability to meet the obligations under a Parent Company Liability Statement, to avoid loopholes whereby a 'shell' parent company could be used to issue the Statement (but whose own parent company evades liability).
- We believe the issue of the Parent Company Liability Statement should be added in draft regulation 23 to the paragraph (8) list of prerequisites before a transfer takes legal effect.
- We also suggest some drafting amendments to DR24, including moving the second part of paragraph (1 ter) to a new standalone paragraph (5 ter); and the use of sub-paragraphs to improve user-friendliness of paragraph (4).
- Draft regulation 24 provides that failure by the parent company could trigger contract termination. We consider that this should be accompanied by relevant legal powers and procedures in Part XI of the regulations, which we do not see currently. We note that draft regulation 103 currently allows the Compliance Committee to look at breach of contract *by the contractor* only, not failure by the parent company. Hence, we propose a new paragraph (9) for draft regulation 103 to cover this point.
- We support the inclusion of a new defined term of "Managing Company" in the Schedule. We suggest a proposed text for such a definition.

We also have the following questions in relation to the general operation of this part of the regulations that we welcome discussing in due course.

- Is the Parent Company Liability Statement intended to cover obligations owed to the Authority itself only – or also liabilities arising from harm to other States or third parties? We think the statement as drafted in Annex XI reads as the latter, and would welcome clarification.
- Is the Parent Company Liability Statement intended to establish a binding contractual agreement between the Managing Company and the Authority? If so, is additional wording needed in Annex XI or elsewhere in the Regulations to confirm the legal character of the commitment and the relationship it creates?
- How (and in what forum, and by whom) would a Parent Company Liability Statement be used or enforced in practice, in the event that a Contractor fails to meet its obligations?