

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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 of Working Group:

IWG of the Whole.

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

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd and Blue Minerals Jamaica Ltd.

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

Draft Reg 21(2)(ii) and 21(3).

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.

3. In the event of termination of sponsorship, [due to reasons other than those listed at subparagraph 2(i) above,] the Contractor shall, within the period referred to in subparagraph 2 (ii) above, obtain another Ssponsoring State or States in accordance with the requirements of regulation 6, and in particular in order to comply with regulation 6 (1) and (2). Such State or States shall submit a certificate of sponsorship in accordance with regulation 6. The exploitation contract terminates automatically if the Contractor fails to obtain a Ssponsoring State or States within the required ~~period~~period unless the Contractor has sought the Council's consent to transfer its rights and obligations under the exploitation contract pursuant to regulations 23.

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

- We propose amendments to Draft Regulation 21(2)(ii) and 21(3) to address an impracticality between Draft Regulations 21(2)(ii), 21(3) and 23.
- We consider that based on the period of time referred to in Draft Regulation 21(2) and Draft Regulation 21(2)alt(ii) and the procedure for the transfer of rights in Draft Regulation 23 that the following two amendments are necessary to provide a contractor with sufficient time to facilitate a transfer of rights in the event of a termination of sponsorship.
 - The period of time referred to in Draft Regulation 21(2) and Draft Regulation 21(2)alt(ii) should be amended to "no earlier than 24 months

after the date of receipt of the notification by the Secretary-General". Under all scenarios, we consider it will be necessary for a contractor whose sponsorship certificate has been terminated and intends on obtaining a new sponsorship certificate to also effect a transfer of rights under Draft Regulation 23.

We submit that 12 months is insufficient time for a contractor to: (i) comply with the domestic requirements of a new Sponsoring State to obtain a new sponsorship certificate, including incorporation and the issuance of the sponsorship certificate; and (ii) complete the procedure in Draft Regulation 23 to obtain the consent of the Council following a Commission's recommendation for the transfer of rights under the exploitation contract.

- The contract should not automatically terminate if the contractor has made an application for the transfer of rights under Draft Regulation 23 and the Council has not provided its consent within 12 months of the notification. We therefore have proposed an exception to termination if the *"Contractor has sought the Council's consent to transfer its rights and obligations under the exploitation contract pursuant to regulation 23"*.

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Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd and Blue Minerals Jamaica Ltd.

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Draft Reg 21(2).

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2. Without prejudice to any terms, rights or obligations between a State and a Contractor under the terms of sponsorship, A State may terminate its sponsorship by providing to the Secretary-General a written notice describing the reasons for such termination. Termination of sponsorship takes effect no earlier than ~~no later than~~ ~~[12]~~ ~~[6]~~ months after the date of receipt of the notification by the Secretary-General ~~[unless the notification specifies an earlier date]~~, except for termination due to a Contractor’s material non-compliance under its terms of sponsorship, in which case termination takes effect no earlier ~~later~~ than 6 months after the date of such notification. A State that issues a written notice to terminate may rescind such notice by written notice to the Secretary-General at any point, prior to the date the termination takes effect.

2 alt. Without prejudice to any terms, rights or obligations between a State and a Contractor under the terms of sponsorship, A State may terminate its sponsorship by providing to the Secretary-General a written notice describing the reasons for such termination and the date termination is to take effect, no earlier than ~~taking into account~~ the following timeframes:

(i) Termination due to a Contractor’s material non-compliance under its terms of sponsorship, ~~negligence or environmental damage~~: termination to take effect no earlier ~~later~~ than 6 months after the date of receipt of the notification by the Secretary-General;

(ii) Termination due to reasons other than those listed in subparagraph (i) above: termination to take effect no earlier ~~later~~ than 12 months after the date of receipt of the notification by the Secretary-General.

A State that issues a written notice to terminate may rescind such notice by written notice to the Secretary-General at any point, prior to the date the termination takes effect.

2 alt bis. If the reasons for termination of sponsorship include material non-compliance under its terms of sponsorship, ~~negligence or environmental damage~~, the Contractor must suspend its mining operations until the Council has considered the matter in accordance with paragraph 6 below.

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

- We oppose Draft Regulation 21(2)(alt) and Draft Regulation 21(2)(alt)(bis).
- We support retaining Draft Regulation 21(2), subject to the proposed amendments outlined above.
- We also propose amendments to Draft Regulation 21(2)(alt), in the event Draft Regulation 21(2) is not adopted. However, we consider that there are several issues with Draft Regulation 21(2)(alt) if adopted in its current form.

Draft Regulation 21(2) and Draft Regulation 21(2)(alt)

- We consider it important that any termination of sponsorship provided for under the Regulations should not prejudice any terms agreed between a Sponsoring State and a Contractor. A Sponsoring State and Contractor may agree terms in addition to the Regulations, such as notice requirements prior to termination and an opportunity for the Contractor to remedy any non-compliance. We consider that the Regulations should be drafted in a manner to facilitate, rather than prevent, such agreements between a Sponsoring State and a Contractor.
- We consider that **minimum** time frames should be set for termination of sponsorship, as opposed to the maximum time frames proposed. The result of a "no later than" termination time frame is that a Sponsoring State may terminate sponsorship with immediate effect. This is a commercially unacceptable level of contractual uncertainty for Contractors, especially given the amount of capital and investment required to undertake activities in the Area.
- If minimum time frames are not adopted under Draft Regulation 21(2), the Contractor will not be afforded sufficient time to obtain another Sponsoring State, as provided for in Draft Regulation 21(3), prior to termination of the sponsorship certificate. Draft Regulation 21(3) would therefore become redundant and time frames would be entirely specified by the terminating Sponsoring State.
- We respectfully do not consider it appropriate or commercial for a termination of sponsorship to be available for *any* non-compliance, irrespective of degree or

consequences of non-compliance. We have therefore proposed a "*materiality*" threshold, which provides flexibility for Sponsoring States based on the circumstances and nature of any breach or breaches. We consider this is particularly important where the Contractor is not afforded an opportunity to remedy any alleged non-compliance in Draft Regulation 21 before a termination notice is issued to the Secretary-General.

- We propose that a State may rescind a termination notice at any point prior to the date the termination takes effect. We consider it important that this option be available to a Sponsoring State and a Contractor, should the Contractor remedy any basis for the termination, or the State wishes to continue to sponsor the Contractor.

Draft Regulation 21(2)(alt)

- With respect to Draft Regulation 21(2)(alt) only, we consider that the proposed termination right based on "*environmental damage*" is not consistent with the Convention. Article 162 of the Convention provides for the disapproval and emergency orders that indicate a risk of "*serious harm*" to the Marine Environment. As such, the lower threshold of "*environmental damage*" for termination is not consistent with the Convention.
- With respect to Draft Regulation 21(2)(alt) only, we consider that the proposed termination right based on "*negligence*" creates uncertainty. In its current form, this termination right is unacceptably wide and effectively covers any negligent act, regardless of the consequence. We consider that this creates an unacceptable commercial uncertainty for Contractors.
- For the reasons outlined above, we consider it fundamental for commercial certainty for Contractors that: (i) any terms agreed with a Sponsoring State prevail with respect to termination of sponsorship; (ii) minimum time frames are adopted for termination, rather than maximum time frames; and (iii) a materiality threshold is included for any non-compliance with terms of sponsorship.

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Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd and Blue Minerals Jamaica Ltd.

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Draft Reg 21(6).

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6. After a Sponsoring State has given a written notice in accordance with paragraph 2 above, the Council, based on the recommendations of the Commission, ~~which shall take account of the reasons for the termination of sponsorship, [especially in the case of termination of contract that also equates attributable to a material breach of compliance with the terms of the exploitation contract], [may] [should]~~ require the Contractor to suspend, [or continue the suspension of,] its mining operations until such time as [the Contractor has proved to the satisfaction of the Council that the breach of compliance with the exploitation contract reasons for the termination of sponsorship have been addressed and] a new certificate of sponsorship is submitted.

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

- We support the adoption of Draft Regulation 21(6), subject to the amendments proposed above.
- We consider that there should be no suspension of the mining operations unless there has been a material breach of the exploitation contract.
- A Sponsoring State may attempt to terminate its sponsorship for any number of reasons unrelated to the Contractor's activities. For example, a Sponsoring State may seek to impose commercial terms that are impossible to satisfy with the intent of terminating sponsorship. In such an event, provided the Contractor has

not materially breached the exploitation contract and secures sponsorship from another Sponsoring State, we consider that the Contractor's mining operations should be allowed to continue in accordance with the exploitation contract.