

**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 23(5)(b).

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.

The Commission shall not ~~recommend approval of~~ ~~[sanction]~~ the transfer if it would:

...

~~[(b) Permit the transferee to monopolize the conduct of activities in the Area with regard to the Resource category covered by the exploitation contract] ~~or the transferee would monopolize or significantly control the production of any single mineral or metal produced globally.~~~~

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

- We oppose the proposed amendment and suggest retaining the existing text of Draft Regulation 23(5)(b).
- We consider that the proposed amendments are not consistent with the terms concerning anti-monopolization provided for in the Convention. In particular, Article 150 (*Policies relating to activities in the Area*) of the Convention provides:

"Activities in the Area shall, as specifically provided for in this Part, be carried out in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to promote international

cooperation for the over-all development of all countries, especially developing States, and with a view to ensuring:

...

*(g) the enhancement of opportunities for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area and **the prevention of monopolization of activities in the Area**" (emphasis added).*

- We consider that the proposed amendment creates a test or standard that is inconsistent with the anti-monopolization standard already provided for in the Convention and the Authority's existing rules, regulations and procedures.
- We suggest that the existing text of Draft Regulation 23(5)(b) be retained without any additions.

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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 23(10).

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.

~~*[The terms and conditions of the transferee's exploitation contract shall be those set out in the standard exploitation contract annexed to these Regulations that is in effect on the date that the Secretary General or a duly authorized representative executes the assignment and novation agreement.]*~~

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

- We respectfully oppose the adoption of Draft Regulation 23(10).
- We consider that Draft Regulation 23(10) is fundamentally inconsistent with the Convention and Annex X (*standard clauses of an exploitation contract*) of the Draft Regulations.
- Annex III, Article 20 of the Convention provides that:

"The rights and obligations arising under a contract may be transferred only with the consent of the Authority, and in accordance with its rules, regulations and procedures. The Authority shall not unreasonably withhold consent to the transfer if the proposed transferee is in all respects a qualified applicant and assumes all of the obligations of the transferor and if the transfer does not confer to the transferee a plan of work, the approval of

which would be forbidden by article 6, paragraph 3(c), of this Annex."

- We consider that Annex III, Article 20 of the Convention provides that **all** rights and obligations arising under a contract may be transferred. However, the effect of Draft Regulation 23(10) is that a transferee may not receive the same rights and obligations as the transferor, but will instead assume the terms set out in the standard exploitation contract annexed to the Regulations as at the time of the assignment.
- Further, proposed Draft Regulation 23(10) conflicts with clauses outlined in Annex X (*standard clauses of an exploitation contract*) of the Draft Regulations, which state:
 - at Section 14.1: "*The rights and obligations of the Contractor under this Contract **may be transferred in whole or in part** only with the consent of the Authority and in accordance with the regulations, including payment of the fee as set out in appendix II to the regulations*"; and
 - at Section 14.3: "*The terms, undertakings and conditions of this Contract **shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.***" (emphasis added)
- From a commercial perspective, the inclusion of Draft Regulation 23(10) potentially erodes the value of an exploitation contract if less favorable terms are assigned under updated standard terms of a contract.
- Therefore, we consider that Draft Regulation 23(10) should not be adopted as it is inconsistent with the Convention and the existing Annex X (*standard clauses of an exploitation contract*) of the Draft Regulations.