

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

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. 18bis.

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.

~~Regulation18-bis
Obligations of the Contractors
[...]~~

Comments/remarks

- During the July 2023 meeting, the retention of the regulation was discussed, and several delegations and observers supported the inclusion of draft regulation 18 bis. I have thus retained it and updated it according to the proposals for refinement.
- I have deleted para 4, since this regulation relates to sponsoring state liabilities, and not the obligations of the Contractors.

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

- We remain of the view that Draft Regulation 18bis is unnecessary, legally problematic and should be deleted.
- The relevant responsibilities that apply to Contractors are clear from the Convention and the Contract. It is not necessary to reproduce those rules here and impose additional (and potentially inconsistent) requirements in this regulation.

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Draft Reg. 18bis (1) and (1. bis)

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.

1. Contractors shall comply with the terms and conditions of their Exploitation Contract, ~~these Regulations~~ and the Rules of the Authority, ~~as well as the applicable Regional Environmental Management Plan as amended from time to time~~, in a manner consistent with the Convention and, ~~the Agreement and the Exploitation Contract~~.

1.bis. A Contractor shall carry out the activities under a proposed Plan of Work in accordance with ~~these Regulations~~, Good Industry Practice, Best Available Scientific ~~Evidence~~ Information and Best Environmental Practices, using appropriately qualified and adequately supervised personnel and shall continually identify and implement solutions that reflect the most up-to-date Best Available Scientific Information and Best Available Techniques.

~~1.ter. — Contractors shall remain current in their implementation of Best Environmental Practices and Good Industry Practices, and shall continually identify and implement solutions that reflect the most up-to-date Best Available Scientific Evidence and Best Available Techniques.~~

~~{1.quat. Contractors shall comply with the national laws, regulations and administrative measures of the sponsoring State or States made pursuant to articles 139 and 153(4) of the Convention and article 4(4) of annex III to the Convention.}~~

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

- Our primary submission is that Draft Regulation 18bis should be deleted as it is unnecessary and legally problematic.
- We particularly note that paragraph 1 is already substantially reflected in the Standard Clauses for Exploitation Contracts and paragraphs 1.bis to 1.quat merely restate standards and obligations found elsewhere in the Draft Regulations, the contract or elsewhere.
- If Draft Regulation 18bis is maintained, we propose amendments to these paragraphs to streamline their language and ensure paragraph 1 does not imply that the REMP is a legally binding document.

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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. 18 bis(2) and (3)

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~~2. Contractors, their holding, subsidiaries, affiliated and Ultimate Parent companies, agencies and partnerships shall be held liable for the compliance of the Contract. Particularly, they shall be jointly and severally [and strictly] liable for the obligation of compensating damages arising outside of permitted Exploitation Activities [or for unforeseen damage arising from permitted activities].~~

~~3. In the event that Contractors fail to comply with their payment obligations under these Regulations, holdings and Ultimate Parent Companies shall be held responsible to effect such payments to the Authority on behalf of Contractors.~~

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

- We reiterate our opposition to Draft Regulation 18 bis (2) and (3). While we recognize the importance of ensuring there is an effective liability mechanism regarding exploitation activities, there is no legal basis for the approach proposed.
- The contract establishes the primary legal relationship regarding exploitation rights, and it is between the Contractor and the Authority. The Contractor alone remains responsible and liable for its performance. It is neither legally permissible nor appropriate for the Authority to attempt to unilaterally expand the scope of liability under the Contract to non-parties.
- Draft Regulations 18 bis (2) and (3) are also contrary to established and fundamental contractual rules and norms of the legal systems of most member States. Non-parties to a contract are rarely bound by that contract, especially via a unilateral

extension of contract obligations without their consent, with no reciprocal rights given in exchange.

- We have opposed these paragraphs before and note with concern they have only been expanded in scope in the latest text. They now hold non-parties liable for “unforeseen damage arising from permitted activities.”