

**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. 24(1.Alt)

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.Alt. [For the purposes of this regulation, a "change in control" occurs where there is a change resulting in ownership of 50 percent or more of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, ~~or a change resulting in ownership of 50 percent or more of the entity providing an Environmental Performance Guarantee.~~]

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

- As emphasized in our prior submissions, we remained concerned by Draft Regulation 24(1.Alt)'s continued inclusion of change in ownership of the provider of the Environmental Performance Guarantee.
- The guarantee-provider is not a party to the contract with the Authority. It does not have direct legal relations with the Authority. It is therefore not appropriate for the Authority to have any powers relating to the guarantee-provider's corporate changes or structure.
- Furthermore, the Contractor may not be in a situation to know every ownership variation that occurs in the corporate structure of the guarantee-provider, as guarantee-providers may be any number of large institutions or corporates.
- All references to the Environmental Performance Guarantee should therefore be removed throughout Draft Regulation 24, including in paragraphs 1.Alt, 2, 3(a) and 3(c).

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Draft Reg. 24(2)

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2. Where there is a change of control of the Contractor, ~~or there is a change of control in any entity providing an Environmental Performance Guarantee on behalf of a Contractor~~, the Contractor shall, as soon as reasonably practicable ~~but no later than 24 hours~~, notify the Secretary-General ~~and the Sponsoring State~~ in advance of such change of control, ~~but in any event within 90 days thereafter and in the case of an entity providing an Environmental Performance Guarantee, no later than within 90 days thereafter.~~ The Contractor shall provide the Secretary-General ~~and the Sponsoring State~~ with such details as he or she shall reasonably request of the change of control ~~[including whether or not the change of control affects the Contractor's nationality or State of effective control, [for the purposes of determining the Sponsoring State.]~~ [On receipt of such notification and any further details pursuant to this paragraph, the Secretary-General shall promptly notify the Commission and the Council.]

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

- Further to our submission on Draft Regulation 24(1), we do not consider it appropriate for Draft Regulation 24(2) – which relates to changes in control of the Contractor – to apply also to providers of Environmental Performance Guarantees.
- We are also concerned by the further encroachment by the Authority into the relationship between the Sponsoring State and Contractor by the insertion of “and the Sponsoring State” in paragraph 2.
- As we proposed in our previous written submissions, the Draft Regulations should leave the structure of the relationship between Sponsoring States and Contractors to those parties. This includes matters such as notifications.

- Finally, we reiterate our opposition to the insertion at the end of paragraph 2 relating to nationality and the State of effective control. “Change of control”, as defined in Draft Regulation 24(1), cannot have any effect on the Contractor’s nationality, which relates to where the Contractor is domiciled. The reference to Contractor nationality in Draft Regulation 24(2) is inaccurate and confuses how “control” and “nationality” operate.

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

- Further to our submission on Draft Regulation 24(1), we do not consider it appropriate for Draft Regulation 24(2) – which relates to changes in control of the Contractor – to apply also to providers of Environmental Performance Guarantees.
- We are also concerned by the further encroachment by the Authority into the relationship between the Sponsoring State and Contractor by the insertion of “and the Sponsoring State” in paragraph 2.
- As we proposed in our previous written submissions, the Regulations should leave the structure of the relationship between Sponsoring States and Contractors to those parties. This includes matters such as notifications.

- Finally, we reiterate our opposition to the insertion at the end of paragraph 2 relating to nationality and the State of effective control.
- “Change of control”, as defined in Draft Regulation 24(1), cannot have any effect on the Contractor’s nationality, which relates to where the Contractor is domiciled. The reference to Contractor nationality in Draft Regulation 24(2) is inaccurate and confuses how “control” and “nationality” operate.

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Draft Reg. 24(3)

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3. After consulting the Contractor ~~or entity providing the Environmental Performance Guarantee, as the case may be,~~ the Commission shall ~~Secretary-General~~ may:

(a) Determine ~~whether that,~~ following a change of control of the Contractor ~~or the entity providing the Environmental Performance Guarantee,~~ the Contractor will continue to be able, to meet its obligations under the exploitation contract ~~or Environmental Performance Guarantee,~~ in which case the contract shall continue to have full force and effect, ~~or~~

~~(b) 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; or~~

~~(c) In the case of an entity providing an Environmental Performance Guarantee, require the Contractor to lodge a new Environmental Performance Guarantee in accordance with regulation 26, within such time frame as the Secretary-General shall stipulate.~~

(d) Confirm with the Sponsoring State, ~~{through the Secretary-General,}~~ whether its sponsorship continues, or require a written notice under regulation 21 bis. where sponsorship has terminated.

~~{(e) Provide a report on any developments pertaining to this paragraph to the Council at its next meeting.}~~

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

- Further to our submission on Draft Regulation 24(1), we do not consider it appropriate for Draft Regulation 24(3) – which relates to changes in control of the Contractor – to apply also to providers of Environmental Performance Guarantees.
- We also continue to oppose the inclusion of Draft Regulation 24(3)(b) as corporate ownership changes are different to transfers of rights and the two concepts should not be confused. A change in corporate ownership or control of a Contractor cannot result in a transfer of rights under a contract – as the same entity remains the holder of the contractual rights.

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Draft Reg. 24(4)

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4. Where the ~~[Commission]~~~~[Secretary-General]~~Secretary General determines that, following a change of control, a Contractor may not ~~be able to~~ have the ~~[operational or]~~ financial capability to meet its obligations under its exploitation contract, the ~~[Secretary-General shall inform the Commission accordingly. The]~~ Commission Secretary-General shall submit a report of its findings and recommendations to the Council. ~~{The Council shall consider the matter at its next meeting with a view to take a decision.}~~

Comments/remarks

- I have received proposals for placing the tasks in paras 2, 3 and 4 with the Commission instead of the Secretary-General. I have done that, but would like to remind delegations that these tasks merely has an administrative nature.

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

- We consider there is no need to extend Draft Regulation 24(4) to also refer to operational capability. The key matters that are relevant to changes of control is financial not operational given the entity that is the Contractor remains the same.
- We also agree with the President that the tasks in Draft Regulation 24 are administrative in nature and thus would support their being handled by the Secretary-General.