

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH 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:

Republic of Nauru

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

Regulation 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.

~~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]

General comments: It will be helpful to revisit paragraphs 1, 1bis, 1ter and 1quater as we review a consolidated text. The text repeats similar requirements in other parts of the regulations, including in the standard contract terms. There is thus the potential for inconsistency and ambiguity in their application.

In relation to paragraphs 2 and 3, we recognise the noble intention behind their drafting and the importance of ensuring there is an effective liability mechanism in place. However, we should reflect on the legalities here and question the legal basis for the approach proposed. The primary contractual relationship regarding exploitation rights is between the Contractor and the Authority. It is the contractor that remains responsible and liable for its performance under the contract. It is not legally permissible for the Authority to attempt to unilaterally expand the scope of liability under the contract to entities that are not party to that contract – this is a basic principle of contract law.

From a practical perspective, we would note that any due diligence exercise conducted by a sponsoring State or States should include a review of the contractual arrangements with key

third party technical providers, including how risk is allocated and the suitability of indemnification provisions as well as putting in place appropriate guarantees and indemnities between a sponsoring State, sponsored contractor and relevant group entities. These are matters that Nauru is examining as it conducts due diligence on its sponsored entity, NORI.