

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29TH SESSION:
COUNCIL - PART II**

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(s) of Delegation(s) making the proposal:

The Kingdom of the Netherlands

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

This proposal introduces an Annex XI (the Draft Regulations contained Annexes up to the number X).

3. 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.

Annex XI (new)

Parent Company Liability Statement

THIS “STATEMENT” made the ... day of ... by

A. [insert name of Managing Company], with its statutory seat at [insert address and home State] and registered at [insert Chamber of Commerce or Trade Register details], represented by ..., with the authority to provide this Statement on behalf of [Managing Company]; and

B. [insert name of Contractor], with its statutory seat at [insert address and home State] and registered at [insert Chamber of Commerce or Trade Register details], represented by ..., with the authority to provide this Statement on behalf of [Contractor]; and

irrevocably and unconditionally DECLARE and REPRESENT that:

Obligations of [Managing Company]

1. [Managing Company] is jointly and severally liable for any debts and liabilities of [Contractor] arising in relation to: (i) the obligations of [Contractor] that follow from the agreement that is to be concluded between [Contractor] and the International Seabed Authority for the exploitation of Mineral resources in the Area (hereinafter referred to as “the Exploitation Contract”); (ii) the acts performed by [Contractor] in the performance of the Exploitation Contract; and (iii) the omissions

- that [Contractor] makes in the performance of the Exploitation Contract (hereinafter referred to as “the Joint and Several Liability Obligation”);
2. [Managing Company] has the financial capability to comply with the Joint and Several Liability Obligation, or can draw on a parent company or its shareholders in order to do so (hereinafter referred to as “Certainty of Funds”);
 3. [Managing Company] confirms that the Contractor is adequately insured to perform the Exploitation Contract in accordance with the applicable regulations and that such insurance will remain in place until such time as the Contractor’s insurance should be in place, in accordance with the Regulations on Exploitation of Mineral Resources in the Area (hereinafter referred to as “the Regulations”) and the Exploitation Contract (hereinafter referred to as “Certainty of Insurance”);
 4. [Managing Company] will procure that [Contractor] complies with the terms and conditions of their Exploitation Contract and the rules, regulations and procedures of the International Seabed Authority, in a manner consistent with the Convention and the Agreement, by among others, but not limited to, exercising its voting rights in the shareholder’s meeting of [Contractor] and issuing instructions to the directors of [Contractor], when it is competent to do so;

Enforcement of Obligations of [Managing Company]

5. at any given point in time, the International Seabed Authority is authorized to request documentation to support the [Managing Company’s] compliance with its obligations of Certainty of Funds and Certainty of Insurance, and that failure to do so within 15 working days or inability to substantiate such Certainty of Funds or Certainty of Insurance has to be remedied by [Managing Company] within a period of 90 days;
6. should [Managing Company] fail to comply with the obligations in provision 5 above, the International Seabed Authority shall suspend the Exploitation Contract by issuing a written notice to the Managing Company and the Contractor in accordance with the applicable regulations, as a consequence of which the Contractor shall cease its operations in the exercise of the Exploitation Agreement until the International Seabed Authority is satisfied that [Managing Company] has remedied its failure to comply with the obligations in provision 5 above;
7. notices to [Managing Company] and [Contractor] are to be sent to the following address:

[insert contact details of Managing Company and Contractor]

Miscellaneous Provisions

8. if [Contractor] transfers its rights and obligations under an Exploitation Contract in whole, [Contractor] and [Managing Company] shall procure that the party that qualifies as the “Managing Company” under Regulations of the transferee provides a statement substantially in the same form as Schedule 14 to the Exploitation Contract (*Parent Company Liability Statement*);
9. if [Contractor] transfers its rights and obligations under an Exploitation Contract in part, this STATEMENT shall remain in full force and effect, unless [Contractor] and [Managing Company] procure that the party that qualifies as the “Managing Company” under Regulations of the transferee provides a statement substantially in the same form as Schedule 14 to the Exploitation Contract (*Parent Company Liability Statement*);
10. if [Managing Company] no longer directly or indirectly owns or controls [Contractor], the party that comes to qualify as the “Managing Company” under the Schedule to the Regulations shall issue a statement substantially in the same form as Schedule 14 to the Exploitation Contract (*Parent Company Liability Statement*);
11. this STATEMENT or the obligations provided for in this STATEMENT cannot be assigned, transferred or novated;
12. a change in the corporate seat of [Managing Company] does not affect the validity of this STATEMENT;
13. [Managing Company] undertakes not to engage in any contracting or other corporate practice that serves to avoid its liability and responsibility as provided for under this STATEMENT;
14. this STATEMENT shall remain in effect after the termination of the Exploitation Contract and can be invoked for any conduct that is reasonably attributable to the Contractor; and
15. any disputes arising in relation to this STATEMENT shall be settled in accordance with Part XII of the Regulations. [Managing Party] herewith provides its explicit written consent to being a party to such dispute settlement procedures.

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

Through this proposal, the Kingdom of the Netherlands introduces a so-called “Parent Company Liability Statement” as a new Annex XI, which will form a compulsory schedule to the Exploitation Contract, signed by a parent company of the Contractor

(one that qualifies as a so-called “Managing Company”). This Statement provides a contractual basis for such joint and several liability.

This proposal is part of a group of proposals by the Kingdom of the Netherlands, in an effort to provide sufficient legal basis in the regulations and Exploitation Contract to ensure that parent companies of Contractors are jointly and severally liable towards the Authority for damage caused by a Contractor. Simultaneously, the Kingdom of the Netherlands submits proposals to Draft Regulations 7, 18bis, 23, and 24 and the Schedule. These submissions should be read together. We will explain these changes further in a paper on the topic, to be shared prior to Part II of the 29th Session.