

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS  
DURING THE 29<sup>TH</sup> 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](mailto: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 Regulation 24(2)

Schedule, Use of Terms and Scope, Change of Control

**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.**

Regulation 24 [President's Text]

**Change of Control**

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~~ where practicable ~~but no later than~~ within 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.]

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};~~

[...]

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]~~ Secretary-General shall inform the Commission accordingly. The Commission 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.]~~

## Schedule

### Use of terms and scope

[...]

“**Change of Control**” means 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]

- We remain concerned by the proposal to include providers of Environmental Performance Guarantees in the Draft Regulation’s provisions on Change of Control.
- 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.
- As such, all references to the Environmental Performance Guarantee should therefore be removed throughout Draft Regulation 24 and the definition of Change of Control.
- We also note that Draft Regulation 24(2) has unclear timing requirements specifying that notification was to take place “no later than 24 hours” but then also saying it had to take place in advance of the Change of Control. We propose a reasonable approach whereby contractors are required to provide the relevant notifications within 24 hours where this is practicable.
- We reiterate our opposition to the language at in 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 – a change of control will not change where a contractor is domiciled or incorporated.

- We similarly 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.
- Finally, in relation to Draft Regulation 24(4) we agree with the former Comments in the text that noted that the tasks under this regulation are generally administrative nature and as such would be most effectively handled by the Secretary-General in first instance.