

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27<sup>TH</sup> 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](mailto:council@isa.org.jm).

**1. Name of Working Group:**

Consolidated 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.**

~~[1. quat Contractors shall throughout the term of their contract, for the purposes of activities in the Area and ancillary activities, only use vessels flagged to registries of States that are States Parties to the Authority, and only use ports located in States that are States Parties to the Authority. In cases where the Contractor seeks to use flags or ports of non member States of the Authority, the prior approval of the Council is required and is conditional upon receiving a written commitment from such non member State or States to enforce the rules, regulations and procedures of the Authority against the Contractor and to cooperate with the Authority for the purposes of securing compliance with the rules, regulations and procedures of the Authority, where required.]~~

~~2. ——— The contractor, its holding, subsidiaries, affiliated and Ultimate Parent companies, agencies and partnerships shall have responsibility or liability for any damage arising out of wrongful acts in the conduct of its operations, account being taken of contributory acts or omissions by the Authority, and shall be held liable for the actual amount of damage.~~

~~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]**

Para 1 quat: please also see comments on regulation 5(e) relating to the flagging of vessels. We consider this regulation outside of the Authority’s mandate and could be deemed anti-competitive. We suggest it is deleted.

Paras 2 and 3: we recognise the noble intention behind the drafting and the importance of ensuring there is an effective liability mechanism in place. However, we would question the legal basis for the approach proposed. The primary contractual relationship 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, where applicable.