

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS
DURING THE 29TH 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.

1. Name of Working Group:

Consolidated 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.

Schedule, Use of Terms and Scope, Effective Control or effectively controlled

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.

“Effective Control” or “effectively controlled” means ~~a the required~~, substantial and genuine link between Sponsoring State and Contractor, demonstrated by the Contractor being a national of the Sponsoring State and being subject to its effective jurisdiction and regulatory control ~~which includes for non-State actors the location of the company’s management and beneficial ownership, as well as the ability of the Sponsoring State to ensure the availability of resources of the Contractor for fulfilment of its contract with the Authority and any liability arising therefrom, through the location of such resources in the territory of the Sponsoring State or otherwise.~~

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

- We continue to be concerned by this proposed attempt to redefine effective control as compared to how the Authority has applied this term for the life of the Exploration Regulations.
- Contractors and Sponsoring States have operated under the established understanding of effective control – namely that of effective regulatory control – and legitimately relied upon this precedent established by the Authority in the context of the Exploration Regulations.
- Sponsoring States have enacted domestic regulatory regimes to reflect this test, and Contractors have invested significant funds in reliance on this test.
- The current test of effective regulatory control is consistent with the Convention, simple to apply, and maximizes opportunities for developing country Sponsoring States. It is also respectful to each State Party’s sovereign choices regarding sponsorship and does not lessen any obligations upon contractors.

- We recognize that some parties have linked certain liability issues with the discussion of effective control but consider that this confuses two separate issues. Regardless of the test adopted for effective control, the issue of liability and access to funds to remedy unlawful environmental damage will still need to be dealt with in specific regulations. Further, the current approach of regulatory control will not in any way prevent the Authority from adopting appropriate measures and regulations to ensure issues around liability are dealt with.
- As such we have proposed amendments to this definition to reflect the existing sponsorship regime which has used the test of regulatory control.