

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 30TH SESSION:
COUNCIL - PARTS 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(s) of Delegation(s) making the proposal:

Republic of Nauru

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

Regulation 24

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.

~~12. 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. 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]. [On receipt of such notification and any further details pursuant to this paragraph, the Secretary-General shall promptly] [within 7 Days] notify the Commission and the Council.]~~

~~23. After [considering information and documents and] consulting the Contractor or entity providing the Environmental Performance Guarantee, as the case may be, the Commission shall:~~

~~(a) Determine whether, 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 Exploitation Cecontract shall continue to have full force and effect;~~

~~[(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 be it that, further to Regulation 23, the party that will come to qualify as the Contractor's Managing Company shall issue a Parent Company Liability Statement effective as of the Change of Control;]~~

~~[(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] [Commission] shall stipulate;]~~

~~(d) Confirm with the Sponsoring State, [through the Secretary-General,] whether its sponsorship continues, or require a written notice under Regulation 21 bis. where sponsorship has terminated; and~~

~~[(e) Provide a report on any developments pertaining to this paragraph to the Council at its next meeting.]~~

3. The Contractor, ~~if applicable,~~ shall provide the Secretary-General confirmation of the Sponsoring State that its sponsorship continues. On receipt of such confirmation, the Secretary-General shall promptly notify the Commission and the Council. If the Sponsoring State decides to terminate its sponsorship, a written notice under Regulation 21 is necessary. A Contractor shall obtain a sponsorship of another Sponsoring State or States in accordance with the requirements of Regulations 6 and 21(3).

4. Where the ~~[Commission]~~Secretary-General determines that, following a Change of Control, a Contractor may not have the [operational or] financial capability to meet its obligations under its Exploitation Contract ~~[for its Managing Company will not have the capability to meet its obligations under the Parent Company Liability Statement]~~, the ~~Commission~~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 taking a decision.]

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

We are concerned by the proposed inclusion of Environmental Performance Guarantee providers in regulation 24 which is supposed to be a regulation regarding change of control. The EPG provider is not a party to the contract with the Authority and has no legal relations with the Authority. It is not appropriate for the Authority to attempt to have powers over the provider's corporate changes or structure. Further, a Contractor may not be in the position to know of every ownership variation within its EPG providers – which may be large, multinational financial institutions. Thus, references to EPG providers should be removed from this regulation 24.

We also consider that the timing of the notice required under paragraph 1 could be clearer. We propose that a reasonable approach would be for Contractors to provide the relevant notification within 24 hours of the Change of Control occurring, where this is practicable.

Paragraph 1's reference to the State of effective control is inappropriate. A change of control cannot have any effect on the contractor's nationality – which relates to where the contractor is domiciled. As such, the reference to nationality in paragraph 1 confuses control and nationality and also clouds further the test for effective control.

Similarly, the proposed paragraph 2(b) appears to contemplate a change of control being similar to a transfer of contractual rights and obligations. This is incorrect. A change in corporate ownership or control does not transfer contractual results – the entity that is party to the ISA Contract remains the same. As such, paragraph 2(b) should not be included.

Finally, in relation to paragraph 4 we agree with comments made in previous versions of the draft regulations that the tasks contemplated in this paragraph are largely administrative in nature. We thus consider these would be best done by the Secretary-General.
